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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 342

FRANK O. LOWDEN, JAMES E. GORMAN AND JOSEPH B. FLEMING, TRUSTEES, CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, PETITIONERS,

vs.

SIMONDS-SHIELDS-LONSDALE GRAIN COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 12, 1938.

CERTIORARI GRANTED OCTOBER 17, 1938.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 342

FRANK O. LOWDEN, JAMES E. GORMAN AND JOSEPH B. FLEMING, TRUSTEES, CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, PETITIONERS,

vs.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

At Law. No. 11,047

FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees, Chicago, Rock Island and Pacific Railway Company, a Corporation, Appellants,

vs.

SIMONDS-SHIELDS-LONSDALE GRAIN COMPANY, a Corporation, Appellee

DESIGNATION OF APPELLANT OF PARTS OF RECORD TO BE PRINTED—Filed November 3, 1937

Come now the Appellants in the above-entitled cause and request the Clerk of the Court to print all of the transcript except those portions of Plaintiffs' Exhibit 2 which are crossed out, said Plaintiffs' Exhibit 2 being the advance report of the Interstate Commerce Commission decision more particularly referred to as Chicago Board of Trade et al., vs. Abilene & Southern Railway Company et al., appearing in the transcript as Plaintiffs' Exhibit 2. It will be found that in this exhibit certain portions are marked out, and those particular portions marked out should not appear in the printed record.

Respectfully, Conrad & Durham, I. M. Lee, Charles M. Miller, Cyrus Crane, Geo. J. Mersereau, Dean Wood, Attorneys for Appellants.

[fol. 2] Service of copy of this document acknowledged this 1st day of November, 1937.

Borders, Borders & Warrick, Attorneys for Appellees.

[File endorsement omitted.]

Citation, in usual form, showing service on Borders, Borders & Warrick, filed August 31, 1937 omitted in printing.

[fol. 3] [Caption omitted]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MISSOURI

PETITION—Filed April 4, 1936

Now come Frank O. Lowden, James E. Gorman and Joseph B. Fleming, and state and show to the court that on the 22nd day of November, 1933 (effective from and after December 1, 1933), the said Frank O. Lowden, James E. Gorman and Joseph B. Fleming were duly appointed trustees of the Chicago, Rock Island & Pacific Railway Company, by the District Court of the United States for the Northern District of Illinois, Eastern Division, in a bankruptcy proceeding therein pending.

Plaintiffs for their cause of action against the defendant, Simonds-Shields-Lonsdale Grain Company, state that they are now, and were at all the times herein mentioned, as trustees of said railway company, engaged in interstate commerce and interstate commerce transportation by railroad into and through many states, and that the shipments hereinafter set forth are and were interstate shipments; that defendant is a corporation organized and existing according to law.

[fol. 4] Plaintiffs further state that this suit is one arising under the Constitution and Laws of the United States of America, and particularly the said Act or Acts of Congress to regulate Commerce, and also the Act of Congress of March 3, 1911, being "An Act to Modify and Amend the Laws Relating to the Judiciary", commonly known as the "New Judiciary Act", in that the right to collect charges, and the amount of money herein sued for, and the right, privilege and immunity to sue for, recover and enforce the same is solely given, and the duty to collect the same is enjoined, enforced and compelled by said Interstate Commerce Act or Acts, or law or laws regulating commerce, and by reason of the premises, this suit is one arising under said Interstate Commerce Act or Acts, or law or laws regulating commerce, as aforesaid.

That heretofore, and long prior to the acts, matters, things and transactions hereinafter mentioned and stated, in compliance with the Act of Congress of February 4, 1887, being "An Act to Regulate Commerce," and all subsequent

acts amendatory thereto, and all subsequent amendments and additions thereto, commonly known as the Interstate Commerce Act, or Acts, plaintiffs filed with the Interstate Commerce Commission of the United States of America, in the District of Columbia, their printed schedule, and printed and kept open for public inspection said schedule, showing all the rates, fares and charges for transportation, between points on their own route, and points on the route of any other carriers by railroad, and also stating separately all terminal charges, storage charges, and all other charges as required by said Commission, all privileges or facilities granted or allowed, and any and all rules or regulations which in anywise changed, affected or determined any part or the aggregate of the aforesaid rates, and charges, or the value of the services rendered to shippers or consignees, and duly posted and published the same, as required by said Act or Acts, and stated therein the following provisions, effective July 1, 1935, establishing a charge of one dollar per car for installing, as shipper's agent, at terminal elevator points specified in said tariff, grain doors for carload shipments in bulk, of grain, grain products, seeds and other articles taking same rates, as specified in said tariff, transported in interstate commerce:

"(1). Grain Doors or Lumber for necessary side door barricades (also for necessary and door barricades, if car [fol. 5] is [equipped] with end doors requiring such protection) for carload shipments *in bulk*, of grain, grain products, seeds and other articles taking same rates, as specified in Lists Nos. 1, 2, 3, 4, 5, 6, Items Nos. 200 to 270, inclusive, will be furnished at loading stations without charge, by the initial road-haul carrier. (See Note 1). The grain doors or lumber so furnished shall be installed by the shipper (or his agent) and at his expense. The railroad will act as shipper's agent and install grain doors at terminal elevator points specified below, at a charge of one dollar ($1.00) per car; prior arrangements for the service to be made with the carriers and to cover a specified period of time:

* * * * * * *

Kansas City * * * Mo.-Kan."

Plaintiffs further state that on various dates, since the effective date of said tariff, plaintiffs, at the request and upon

the order of the defendant, delivered certain cars at certain grain elevators designated by the defendant for loading grain and grain products, in bulk, by the defendant, which said cars after being so loaded were transported over the lines of the plaintiffs, the initial road-haul carrier and connecting lines to destination; that the loading point and unloading point of each of said shipments were not within the same terminal or switching district.

Plaintiffs further state that after said cars had been placed for loading, as aforesaid, and prior to the loading thereof, and pursuant to the provisions of said [tariff], plaintiffs, as the initial road-haul carrier, and as the defendant's agent, installed the necessary grain doors in each of said cars, the defendant having previously notified plaintiffs that it would not accept from plaintiffs for loading with bulk grain or grain products cars that were not fully coopered with grain doors and that were not suitably and properly prepared for loading bulk grain or grain products; that under and by virtue of the applicable tariff then on file with Interstate Commerce Commission as aforesaid, the defendant became indebted to plaintiff for the said installation by plaintiffs of said grain doors as [foresaid], in the sum of one dollar ($1.00) per car, or the total sum of Six Hundred Twenty-four Dollars ($624.00).

Plaintiffs further state that the following tabulated statement shows the date and number of the waybills, the initial [fol. 6] and number of cars in which said bulk grain shipments were made, the date the grain doors were installed by the plaintiffs, the destination of the various shipments, and the charge for installing the grain doors on each of said cars:

Sheet 1

Statement of cars coopered for bulk grain loading at Kansas City Mo-Kans., durinh month of July 1935 for the account of Simon Shields-Lonsdale Grain Co

7-8

Waybill Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charge
7-5	92374	MTLW	703292	7-2	Knoxville Ia	$1.00
7-17	53447	UP	79166	7-15	Des Moines Ia	1.00
7-17	53448	Frisco	149103	7-12	Do	1.00
7-22	89507	Frisco	162820	7-16	Fostoria Ohio	1.00
7-22	89506	SP	29688	7-18	Do	1.00
7-22	89508	CBQ	131830	7-22	Do	1.00
7-5	88859	RI	40986	7-5	Springfield Ill	1.00
7-6	88904	RI	18830	7-6	Do	1.00
7-6	51211	RI	141831	7-8	Des Moines Ia	1.00
7-8	51210	RI	140729	7-8	Do	1.00
7-8	51209	RI	141485	7-8	Do	1.00
7-8	88952	RI	40981	7-8	Springfield Ill	1.00
7-8	88951	WM	23087	7-8	Do	1.00
7-9	92523	CNW	139732	7-8	Harrisburg Va	1.00
7-9	88973	MSTL	18810	7-8	Fostoria Ohio	1.00
7-9	88972	ACL	50560	7-8	Do	1.00
7-9	88971	RI	141866	7-8	Do	1.00
~~7-9~~	~~88895~~	~~MP~~	~~95142~~	~~7-9~~	~~Milwaukee Wisc~~	~~0.85~~ #
7-11	89107	RI	44309	7-11	Springfield Ill	1.00
7-12	89153	RDG	5137	7-11	Milwaukee Wisc	1.00
7-12	89152	RI	141234	7-11	Do	1.00
7-12	89151	RI	141389	7-11	Do	1.00
7-12	89150	RI	140652	7-12	Do	1.00
7-12	89149	PA	43017	7-12	Do	1.00
7-12	89148	HCR	899	7-12	Do	1.00
7-12	89147	RI	141347	7-12	Do	1.00
7-12	89146	RI	141501	7-12	Do	1.00
7-12	89145	CO	7178	7-12	Do	1.00
7-12	89144	BO	269656	7-12	Do	1.00
7-12	89143	RI	140634	7-12	Do	1.00
7-12	89154	Frisco	147180	7-11	Do	1.00
7-12	52409	RI	45625	7-12	Atchison Kans	1.00
7-12	52408	MSTL	18788	7-12	Do	1.00
7-13	92681	RI	141201	7-12	Massilon Ohio	1.00
7-12	52402	RI	140654	7-12	Des Moines Ia	1.00
7-12	52405	RI	141143	7-12	Do	1.00
7-12	52406	CO	8497	7-12	Do	1.00
7-12	52407	OMA	33024	7-12	Do	1.00
7-12	52404	PA	68452	7-12	Do	1.00
7-12	52403	RI	141451	7-12	Do	1.00
7-15	95	B&O	268236	7-15	Davenport Ia	1.00
7-15	89234	NP	14959	7-15	Springfield Ill	1.00
7-15	89233	CP	220736	7-15	Do	1.00

7-8	51210	RI	140729	7-8	Do	1.00	
7-8	51209	RI	141485	7-8	Do	1.00	
7-8	88952	RI	40981	7-8	Springfield Ill	1.00	
7-8	88951	WM	23087	7-8	Do	1.00	
7-9	92523	CNW	139732	7-8	Harrisburg Va	1.00	
7-9	88973	MSTL	18810	7-8	Fostoria Ohio	1.00	
7-9	88972	ACL	50560	7-8	Do	1.00	
7-9	88971	RI	141866	7-8	Do	1.00	
~~7-9~~	~~88895~~	~~MP~~	~~95142~~	~~7-9~~	~~Milwaukee Elec~~	~~0.85~~	#
7-11	89107	RI	44309	7-11	Springfield Ill	1.00	
7-12	89153	RDG	5137	7-11	Milwaukee Wisc	1.00	
7-12	89152	RI	141234	7-11	Do	1.00	
7-12	89151	RI	141389	7-11	Do	1.00	
7-12	89150	RI	140652	7-12	Do	1.00	
7-12	89149	PA	43017	7-12	Do	1.00	
7-12	89148	HCR	893	7-12	Do	1.00	
7-12	89147	RI	141347	7-12	Do	1.00	
7-12	89146	RI	141501	7-12	Do	1.00	
7-12	89145	CO	7178	7-12	Do	1.00	
7-12	89144	BO	269656	7-12	Do	1.00	
7-12	89143	RI	140634	7-12	Do	1.00	
7-12	89154	Frisco	147180	7-11	Do	1.00	
7-12	52409	RI	45625	7-12	Atchison Kans	1.00	
7-12	52408	MSTL	18788	7-12	Do	1.00	
7-13	92681	RI	141201	7-12	Massilon Ohio	1.00	
7-12	52402	RI	140654	7-12	Des Moines Ia	1.00	
7-12	52405	RI	141143	7-12	Do	1.00	
7-12	52406	CO	8497	7-12	Do	1.00	
7-12	52407	OMA	33084	7-12	Do	1.00	
7-12	52404	PA	68482	7-12	Do	1.00	
7-12	52403	RI	141451	7-12	Do	1.00	
7-15	95	B&O	268236	7-15	Davenport Ia	1.00	
7-15	89234	WP	14959	7-15	Springfield Ill	1.00	
7-15	89233	CP	220736	7-15	Do	1.00	
7-15	89235	RI	140733	7-15	Do	1.00	
~~7-16~~	~~98896~~	~~RI~~	~~140868~~	~~7-16~~	~~Midland Mill~~	~~0.85~~	#
~~7-16~~	~~98896~~	~~RI~~	~~140468~~	~~7-16~~	~~Do~~	~~2.25~~	#
~~7-16~~	~~98896~~	~~RI~~	~~141886~~	~~7-16~~	~~Do~~	~~2.85~~	#
~~7-16~~	~~98896~~	RI	~~140398~~	~~7-16~~	~~Do~~	~~2.25~~	#
~~7-16~~	~~98896~~	~~RI~~	~~140084~~	~~7-16~~	~~Do~~	~~2.85~~	#
7-16	89290	RI	41027	7-16	Springfield Ill	1.00	
7-16	89289	RI	42496	7-16	Do	1.00	

Cross Town

Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charge	
7-16	89288	RI	44133	7-16	Springfield Ill	$1.00	
7-16	89287	B4	56345	7-16	Do	1.00	
7-16	89286	IC	154754	7-16	Do	1.00	
7-16	53128	WP	22523	7-16	Des Moines Ia	1.00	
7-16	89284	TNO	53651	7-16	Springfield Ill	1.00	
7-16	89283	RI	141486	7-16	Do	1.00	
7-16	89285	RI	155880	7-16	Do	1.00	
~~7-19~~	~~89297~~	~~RI~~	~~141784~~	~~7-19~~	~~Midland Mill~~	~~0.25~~	#
~~7-19~~	~~89297~~	~~RI~~	~~142267~~	~~7-19~~	~~Do~~	~~0.25~~	#
~~7-19~~	~~89297~~	~~RI~~	~~141280~~	~~7-19~~	~~Do~~	~~0.25~~	#
~~7-19~~	~~89297~~	~~RI~~	~~141606~~	~~7-19~~	~~Do~~	~~0.25~~	#
~~7-19~~	~~89297~~	~~RI~~	~~142664~~	~~7-19~~	~~Do~~	~~0.25~~	#
7-19	92936	RI	157299	7-19	Massillon Ohio	1.00	
7-22	89498	RI	140217	7-19	Springfield Ill	1.00	
7-22	89497	RI	142791	7-19	Do	1.00	
7-22	89496	RI	43232	7-19	Do	1.00	
7-19	54024	IC	157018	7-19	Des Moines Ia	1.00	
7-22	89495	RI	43007	7-22	Springfield Il	1.00	
7-22	89494	RI	41990	7-22	Do	1.00	
7-22	89499	CNW	128860	7-22	Do	1.00	
7-22	89500	CNW	103894	7-22	Do	1.00	
7-22	89501	IGN	16075	7-22	Do	1.00	
7-24	89617	Frisco	146728	7-24	Do	1.00	
7-24	89616	SL	132774	7-24	Do	1.00	
7-24	89615	RI	45569	7-24	Do	1.00	
7-24	89614	RI	42068	7-24	Do	1.00	
7-24	89613	PA	568321	7-24	Do	1.00	
7-24	89612	RI	158594	7-24	Do	1.00	
7-24	89611	RI	43272	7-24	Do	1.00	
7-24	89610	RI	41812	7-24	Do	1.00	
7-24	89609	RI	43406	7-24	Do	1.00	
7-25	89693	CNW	137050	7-25	Do	1.00	
7-25	89692	Erie	75122	7-25	Do	1.00	
7-25	89691	IGN	6358	7-25	Do	1.00	
7-25	89690	ITC	8102	7-25	Do	1.00	
7-25	89689	IGN	9584	7-25	Do	1.00	
7-25	89688	SL	134 970	7-25	Do	1.00	
7-25	89687	B&O	276564	7-25	Do	1.00	
7-25	89686	RI	46191	7-25	Do	1.00	
7-25	89685	LA	12148	7-25	Do	1.00	
7-25	89684	IGN	9467	7-25	Do	1.00	
7-25	89688	PLE	36407	7-25	Do	1.00	
7-25	89694	SP	37704	7-25	Do	1.00	
7-25	89695	B&O	271643	7-25	Do	1.00	
7-25	93153	RI	142741	7-25	Hillsdale Mch	1.00	
7-25	93155	RI	142252	7-25	Do	1.00	
7-25	93156	RI	140340	7-25	Do	1.00	
7-25	93157	RI	141168	7-25			

					Do	1.00
~~7-19~~	~~92897~~	~~RI~~	~~141966~~	~~7-19~~	~~Midland Mill~~	~~0.95~~ #
~~7-19~~	~~92897~~	~~RI~~	~~142967~~	~~7-19~~	~~Do~~	~~0.95~~ #
~~7-19~~	~~92897~~	~~RI~~	~~141966~~	~~7-19~~	~~Do~~	~~2.95~~ #
~~7-19~~	~~92897~~	~~RI~~	~~142965~~	~~7-19~~	~~Do~~	~~0.95~~ #
~~7-19~~	~~92897~~	~~RI~~	~~142964~~	~~7-19~~	~~Do~~	~~0.95~~ #
7-19	92936	RI	157299	7-19	Massillon Ohio	1.00
7-22	89498	RI	140217	7-19	Springfield Ill	1.00
7-22	89497	RI	142791	7-19	Do	1.00
7-22	89496	RI	43232	7-19	Do	1.00
7-19	54024	IC	157018	7-19	Des Moines Ia	1.00
7-22	89495	RI	43007	7-22	Springfield Il	1.00
7-22	89494	RI	41990	7-22	Do	1.00
7-22	89499	CNW	128860	7-22	Do	1.00
7-22	89500	CNW	103894	7-22	Do	1.00
7-22	89501	IGN	16075	7-22	Do	1.00
7-24	89617	Frisco	146728	7-24	Do	1.00
7-24	89616	SL	132774	7-24	Do	1.00
7-24	89615	RI	45569	7-24	Do	1.00
7-24	89614	RI	42068	7-24	Do	1.00
7-24	89613	PA	568321	7-24	Do	1.00
7-24	89612	RI	158594	7-24	Do	1.00
7-24	89611	RI	43272	7-24	Do	1.00
7-24	89610	RI	41812	7-24	Do	1.00
7-24	89609	RI	43406	7-24	Do	1.00
7-25	89693	CNW	137050	7-25	Do	1.00
7-25	89692	Erie	75122	7-25	Do	1.00
7-25	89691	IGN	6358	7-25	Do	1.00
7-25	89690	ITC	8102	7-25	Do	1.00
7-25	89689	IGN	9584	7-25	Do	1.00
7-25	89688	SL	134 970	7-25	Do	1.00
7-25	89687	B&O	276564	7-25	Do	1.00
7-25	89686	RI	46191	7-25	Do	1.00
7-25	89685	LA	12148	7-25	Do	1.00
7-25	89684	IGN	9467	7-25	Do	1.00
7-25	89688	PLE	36407	7-25	Do	1.00
7-25	89694	SP	37704	7-25	Do	1.00
7-25	89695	B&O	271643	7-25	Do	1.00
7-25	93153	RI	142741	7-25	Hillsdale Mch	1.00
7-25	93155	RI	142252	7-25	Do	1.00
7-25	93156	RI	140340	7-25	Do	1.00
7-25	93157	RI	141167	7-25	Do	1.00
7-25	93154	RI	142972	7-25	Do	1.00
						44.00

Cross Town

Sheet 3- Simon Shields-Lonsdale Grain Co- July 193

Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charge
7-30	[illegible]	RI	[illegible]	[illegible]	Midland Elev	[illegible] #
						[illegible] #
[illegible]	[illegible]	RI	[illegible]	[illegible]	Do	[illegible] #
[illegible]	[illegible]	SP	[illegible]	[illegible]	Do	[illegible] #
[illegible]	[illegible]	RI	[illegible]	[illegible]	Do	[illegible] #
[illegible]	[illegible]	Pa	[illegible]	[illegible]	Do	[illegible] #
7-29	89745	Pa	64796 ✓	7-26	Springfield Ill	1.00
7-29	89744	PRM	9724 ✓	7-26	Do	1.00
7-29	89743	B&O	266998 ✓	7-26	Do	1.00
7-29	89742	RI	48539 ✓	7-26	Do	1.00
7-29	93276	NCO	181057 ✓	7-26	Massillion Ohio	1.00
7-22	89503	RI	41838 ✓	7-22	Springfield Ill	1.00
7-22	89502	SP	15689 ✓	7-22	Do	1.00
7-20	92972	IC	156920 ✓	7-20	Massillion Ohio	1.00
[illegible]	[illegible]	RI	[illegible]	[illegible]	Empire Elev	[illegible] #
						9.00

Cross Town

Statement of cars coopered for bulk grain loading at Kansas City,Mo-Kansas during month August 1935 for account Simonds Shields Lonsdale Grain Co

Waybill Date	Number	Car Initial	Number	Date Coopered	Destination	Coopering Charge
8- I	80040	R I	42075	8-I	Springfield Ill	$I.00
8- 5	93649	DTI	I8080	8-2	Fredrick Md	I.00
8-6	93648	S P	I5750	8-5	"	I.00
8-6	93547	S P	24398	8-5	"	I.00
8-6	93689	C P	247287	8-2	"	I.00
8-6	93688	Pa	37188	8-2	"	I.00
8-6	57509	CNW	I26882	8-5	Des Moines Ia	I.00
8-7	80289	Pa	505545	8-7	Fostoria Ohio	I.00
8-7	80295	GAO	761	8-7	"	I.00
8-7	80292	Pa	572725	8-7	"	I.00
8-7	80290	RI	I42555	8-7	"	I.00
8-7	80291	R I	I40420	8-7	"	I.00
8-8	93686	R I	I40561	8-7	Frederick Md	I.00
8-8	93687	R I	I40369	8-7	"	I.00
8-8	93689	R I	45765	8-7	"	I.00
8-7	93653	R I	I42378	8-7	Millsdale Mich	I.00
8-7	93654	R I	I42220	8-7	"	I.00
8-7	93657	R I	I41865	8-7	"	I.00
8-7	93656	MPTD	410	8-7	"	I.00
8-7	93665	PM	83152	8-7	"	I.00
8-9	93743	CP	246740	8-9	Fredrick Md	I.00
8-9	93742	NYC	95817	8-9	"	I.00
8-9	93744	STLSM	8202	8-9	"	I.00
8-7	93652	OMA	34030	8-7	Massillon Ohio	I.00
8-10	93785	SP	27236	8-10	Millsdale Mich	I.00
8-10	93784	Mo	82686	8-10	"	I.00
8-10	93783	Pa	564498	8-10	"	I.00
8-10	93782	Pa	565811	8-10	"	I.00
8-10	93780	MC	80327	8-10	"	I.00
8-10	93781	SAL	I6665	8-10	"	I.00
8-13	93843	R I	I42097	8-12	"	I.00
8-13	93844	R I	I40109	8-12	"	I.00
8-13	93845	NYC	96083	8-12	"	I.00
8-13	93841	R I	I40518	8-12	"	I.00
8-13	93842	R I	I41785	8-12	"	I.00
8-13	59176	R I	I40641	8-12	Davenport Ia	I.00
8-13	59177	CP	241910	8-12	"	I.00
8-12	59047	R I	41467	8-12	Des Moines Ia	I.00
8-13	65170	R I	44036	8-13	Massillon Ohio	I.00
8-13	59330	R I	I40258	8-13	Davenport Ia	I.00
8-13	59329	R I	I41754	8-13	"	I.00
8-13	59327	R I	I40494	8-13	"	I.00
8-15	80708	PWO	32850	8-15	Milwaukee Wis	I.00
8-15	80739	RIP	61049	8-15	"	I.00

8-5	93547	S P	24398	8-5	"	I.00
8-6	93489	C P	247227	8-2	"	I.00
8-6	93486	Pa	37188	8-2	"	I.00
8-6	57509	CNW	I26882	8-5	"	I.00
8-7	80289	Pa	503545	8-7	Des Moines Ia	I.00
8-7	80295	CAO	761	8-7	Postoria Ohio	I.00
8-7	80292	Pa	572725	8-7	"	I.00
8-7	80290	RI	I42555	8-7	"	I.00
8-7	80291	R I	I40420	8-7	"	I.00
8-8	93686	R I	I40561	8-7	"	I.00
8-8	93687	R I	I40369	8-7	Frederick Md	I.00
8-8	93689	R I	45765	8-7	"	I.00
8-7	93653	R I	I42378	8-7	"	I.00
8-7	93654	R I	I42220	8-7	Millsdale Mich	I.00
8-7	93657	R I	I41865	8-7	"	I.00
8-7	93656	MPYD	410	8-7	"	I.00
8-7	93655	RM	83152	8-7	"	I.00
8-9	93743	CP	246740	8-9	"	I.00
8-9	93742	NYC	95817	809	Fredrick Md	I.00
8-9	93744	STLRM	3202	8-9	"	I.00
8-7	93652	OMA	34030	8-7	"	I.00
8-10	93785	SP	27236	8-10	Massillon Ohio	I.00
8-10	93784	Mo	82686	8-10	Millsdale Mich	I.00
8-10	93783	Pa	564498	8-10	"	I.00
8-10	93782	Pa	565511	8-10	"	I.00
8-10	93780	MC	80327	8-10	"	I.00
8-10	53781	SAL	I6665	8-10	"	I.00
8-13	93843	R I	I42097	8-12	"	I.00
8-13	93844	R I	I40109	8-12	"	I.00
8-13	93845	NYC	95085	8-12	"	I.00
8-13	93841	R I	I40518	8-12	"	I.00
8-13	93842	R I	I41785	8-12	"	I.00
8-13	59176	R I	I40641	8-12	Davenport Ia	I.00
8-13	59177	CP	241910	8-12	"	I.00
8-12	59047	R I	41467	8-12	Des Moines Ia	I.00
8-13	65170	R I	44036	8-13	Massillon Ohio	I.00
8-13	59520	R I	I40288	8-13	Davenport Ia	I.00
8-13	59529	R I	I41754	8-13	"	I.00
8-13	58527	R I	I40494	8-13	"	I.00
8-15	80708	PWO	32850	8-15	Milwaukee Wis	I.00
8-15	80737	BAR	61049	8-15	"	I.00
8-15	80709	R I	45890	8-15	"	I.00
8-16	93929	R I	I57827	8-16	Cleveland Ohio	I.00
8-16	93978	R I	44870	8-16	Massillon "	I.00
8-16	80772	CNW	54768	8-16	Milwaukee Wis	I.00

48.00

Statement of cars coopered for bulk grain loading at Kansas City, Mo-Kansas- August 1935 account Simonds-Shields-Lonsdale Grain Company

Waybill Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charge
8-16	80773	R I	40807	8-16	Milwaukee Wis	$1.00
~~8-21~~	~~[illegible]~~	~~R I~~	~~I[illegible]70~~	~~8-19~~	~~Iowa Park Texy~~	~~[illegible]~~
8-19	94084	LN	I2212	8-19	Fredrick Md	I.00
8-19	[illegible]	R I	I41266	8-19	"	I.00
8-19	94082	B&O	277554	8-19	"	I.00
8-19	94080	SL	I36610	8-19	Massillon Ohio	I.00
8-19	80867	RI	I55544	8-19	Milwaukee Wis	I.00
8-19	80868	MP	I1557	8-19	"	I.00
8-19	40656	CO	8280	8-19	Des Moines Ia	I.00
8-20	94145	R I	I42747	8-19	Hillsdale Mich	I.00
8-20	94141	CP	246091	8-19	"	I.00
8-20	94142	SP	26946	8-19	"	I.00
8-20	94146	B4	58853	8-19	Fredrick Md	I.00
8-20	94147	NYC	99547	8-19	"	I.00
8-20	94148	R I	I40819	8-19	"	I.00
8-20	94143	B4	56011	8-19	Hillsdale Mich	I.00
8-20	94144	R I	I41409	8-19	"	I.00
8-21	94193	R I	I42978	8-21	Fredrick Md	I.00
8-21	94194	R I	I40118	8-21	"	I.00
8-22	94231	R I	I42856	8-21	"	I.00
8-22	94342	R I	I40725	8-21	"	I.00
8-22	94230	MM	505090	8-21	"	I.00
8-21	41145	MSTL	24822	8-21	Des Moines Ia	I.00
8-23	41788	R I	I42854	8-21	Davenport Ia	I.00
8-23	41787	R I	I40879	8-21	"	I.00
8-22	94238	GH	414998	8-22	Detroit Mich	I.00
8-22	94239	IC	I56547	8-22	"	I.00
8-24	41975	R I	44299	8-23	Enid, Okla	I.00
8-24	[illegible]	R I	43369	8-23	"	I.00
8-24	41973	R I	46092	8-23	"	I.00
8-24	41972	TH0	51809	8-23	"	I.00
8-24	42065	R I	I42565	8-23	Davenport Ia	I.00
8-24	42064	R I	I40799	8-23	"	I.00
8-24	91293	R I	I41406	8-23	Fredrick Md	I.00
8-24	91292	R I	I40254	8-23	"	I.00
8-24	42066	R I	I40262	8-23	Davenport Ia	I.00
8-24	67109	SL	38460	8-23	Harrisonburg Va	I.00
8-24	41971	R I	40776	8-23	Enid, Okla	I.00
8-24	41970	R I	42414	8-23	"	I.00
8-24	42264	R I	43364	8-23	"	I.00
8-24	41968	S P	30209	8-23	"	I.00
8-26	42344	R I	40124	8-23	Davenport Ia	I.00
8-24	94291	R I	42749	8-24	Massillon Ohio	I.00
8-26	94346	R I	44626	8-26	"	I.00

8-19	94084	LH	I2212	8-19	Fredrick Md	I.00
8-19	94083	R I	I4I266	8-19	"	I.00
8-19	94082	B&O	277554	8-19	"	I.00
8-19	94080	SL	I38410	8-19	Massillon Ohio	I.00
8-19	80867	RI	I55544	8-19	Milwaukee Wis	I.00
8-19	80868	NP	I1557	8-19	"	I.00
8-19	40656	CO	8280	8-19	Des Moines Ia	I.00
8-20	94I45	R I	I42747	8-19	Hillsdale Mich	I.00
8-20	94I4I	CP	244091	8-19	"	I.00
8-20	94I42	EP	26946	8-19	"	I.00
8-20	94I46	B4	56853	8-19	Fredrick Md	I.00
8-20	94I47	NYC	99547	8-19	"	I.00
8-20	94I48	R I	I40819	8-19	"	I.00
8-20	94I43	B4	56011	8-19	Hillsdale Mich	I.00
8-20	94I44	R I	I4I409	8-19	"	I.00
8-2I	94I93	R I	I42078	8-2I	Fredrick Md	I.00
8-2I	94I94	R I	I40II8	8-2I	"	I.00
8-22	9423I	R I	I42856	8-2I	"	I.00
8-22	94342	R I	I80725	8-2I	"	I.00
8-22	94230	MN	505090	8-2I	"	I.00
8-2I	4II45	MSTL	24822	8-2I	Des Moines Ia	I.00
8-23	4I788	R I	I42854	8-2I	Davenport Ia	I.00
8-23	4I787	R I	I40879	8-2I	"	I.00
8-22	94228	GM	4I4998	8-22	Detroit Mich	I.00
8-22	94229	IC	I55547	8-22	"	I.00
8-24	4I975	R I	44299	8-23	Enid,Okla	I.00
8-24	43808	R I	43369	8-23	"	I.00
8-24	4I973	R I	46092	8-23	"	I.00
8-24	4I972	TMO	51809	8-23	"	I.00
8-24	42065	R I	I42565	8-23	Davenport Ia	I.00
8-24	42084	R I	I40799	8-23	"	I.00
8-24	9I293	R I	I4I406	8-23	Fredrick Md	I.00
8-24	9I292	R I	I40254	8-23	"	I.00
8-24	42056	R I	I80362	8-23	Davenport Ia	I.00
8-24	67I09	SL	38460	8-23	Harrisonburg Va	I.00
8-24	4I97I	R I	40776	8-23	Enid,Okla	I.00
8-24	4I970	R I	43II4	8-23	"	I.00
8-24	43264	R I	43264	8-23	"	I.00
8-24	4I968	S P	30209	8-23	"	I.00
8-24	42344	R I	I40I24	8-23	Davenport Ia	I.00
8-24	94291	R I	42749	8-24	Massillon Ohio	I.00
8-26	94346	R I	44626	8-26	"	I.00
8-27	94376	R I	I42812	8-26	Frederick Md	I.00
8-27	94375	CP	244357	8-26	"	I.00
8-27	94374	B4	57339	8-26	"	I.00
8-27	42468	Pa	55058	8-24	Davenport Ia	I.00
8-27	42469	R I	I40222	8-26	Enid,Okla	I.00
8-27	42466	R I	45932	8-26	"	I.00
8027	42465	R I	44734	8-26	"	I.00
8-27	42464	R				50.00

Statement of cars coopersd for bulk grain loading at Kansas City, Mo-Kansas August 1935 for account of Simonds Shields Lonsdale Grain Co-

Waybill Date	Number	Car Initial	Number	Date Coopered	Destination	Coopering Charge
8-27	42464	R I	4II50	8-26	Enid, Okla	$I.00
8-27	42463	R I	4342I	8-26	"	I.00
8-27	42462	R I	44844	8-26	"	I.00
8-27	42688	R I	44086	8-26	"	I.00
8-27	42687	R I	44265	8-27	"	I.00
8-29	43301	MSTL	I8250	8-29	Des Moines Ia	I.00
8-29	94477	ERIE	90I24	8-29	Massillon Ohio	I.00
8-30	42462	PM	83034	8-29	Des Moines Ia	I.00
8-30	8I428	LA	I2047	8-29	Noblesville Ind	I.00
8-30	8I429	FMO	32I42	8-29	"	I.00
8-3I	8I44I	PM	83448	8-30	"	I.00
8-30	4346I	B4	58063	8-30	Davenport Ia	I.00
8-30	43460	R I	I42525	8-30	"	I.00
8-3I	43854	CP	230525	8-30	"	I.00
8-3I	43855	NYC	96I56	8-30	"	I.00
8-3I	94537	PM	89045	8-3I	Massillon Ohio	I.00
8-3I	94540	ATSF	228543	8-30	Nashville Tenn	I.00
8-3I	94538	CNW	I0I752	8-30	"	I.00
8-3I	9454I	MILW	7I2924	8-30	"	I.00
8-3I	94539	FMO	3I828	8-30	"	I.00
~~9-4~~	~~88854~~	~~R I~~	~~I48I58~~	~~Enid~~	~~8-3I~~	~~Spoonbread M~~	~~$I.00~~

Statement of cars coopered for bulk grain loading at Kansas City, Mo., Kans. during the month of September 1935 for the account of Simonds-Shields-Lonsdale Co.

19-20

WAYBILL DATE	WAYBILL NUMBER	CAR INITIAL	CAR NUMBER	DATE COOPERED	DESTINATION	COOPERING CHARGES
9-3	81550	CRIP	45126	9-3	Milwaukee, Wisc.	$1.00
9-3	81549	NP	14524	9-3	"	$1.00
9-3	81548	PM	33628	9-3	"	$1.00
9-3	81547	CRIP	44638	9-3	"	$1.00
9-3	81546	CP	138284	9-3	"	$1.00
9-3	81555	CRIP	46177	9-3	"	$1.00
9-3	81554	CRIP	44842	9-3	"	$1.00
9-3	81553	CRIP	15311	9-3	"	$1.00
9-3	81552	CRIP	43141	9-3	"	$1.00
9-3	81551	CRIP	41590	9-3	"	$1.00
9-4	94642	CRIP	141766	9-3	Hillsdale, Mich.	$1.00
9-4	94641	CN	510951	9-3	"	$1.00
9-4	94640	CRIP	140356	9-3	"	$1.00
9-4	94639	CN	508212	9-3	"	$1.00
9-4	94638	CRIP	141398	9-3	"	$1.00
9-4	94637	CNW	100918	9-3	"	$1.00
9-4	94636	NP	29965	9-3	"	$1.00
9-4	81562	CRIP	44111	9-3	Milwaukee, Wisc.	$1.00
9-5	44870	CRIP	41458	9-4	Enid, Okla.	$1.00
9-5	44869	CRIP	42680	9-4	"	$1.00
9-5	44868	CRIP	141126	9-4	"	$1.00
9-5	44867	CRIP	140114	9-4	"	$1.00
9-5	44866	CRIP	142922	9-4	"	$1.00
9-5	44865	CRIP	140658	9-4	"	$1.00
9-5	44864	CRIP	141673	9-4	"	$1.00
9-4	81634	SOO	38296	9-4	Milwaukee, Wisc.	$1.00
9-5	44872	CRIP	142872	9-5	Enid, Okla.	$1.00
9-6	81718	CRIP	42826	9-5	Milwaukee, Wisc.	$1.00
9-5	44871	CRIP	42926	9-5	Des Moines, Ia.	$1.00
9-5	81690	CNW	138702	9-5	Milwaukee, Wisc.	$1.00
9-5	81689	CNW	109804	9-5	"	$1.00
9-5	81688	CN	416220	9-5	"	$1.00
9-5	81687	CRIP	42723	9-5	"	$1.00
9-5	81686	CRIP	43603	9-5	"	$1.00
9-7	81783	CRIP	156064	9-6	"	$1.00
9-7	45567	CRIP	142520	9-6	Davenport, Iowa.	$1.00
9-7	81782	CRIP	45079	9-6	Milwaukee, Wisc.	$1.00
9-9	45923	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

WAYBILL DATE	WAYBILL NUMBER	CAR INITIAL	CAR NUMBER	DATE COOPERED	DESTINATION	COOPERING CHARGES
9-3	81550	CRIP	45126	9-3	Milwaukee, Wisc.	$1.00
9-3	81549	MP	14524	9-3	"	$1.00
9-3	81548	PM	33628	9-3	"	$1.00
9-3	81547	CRIP	44638	9-3	"	$1.00
9-3	81546	CP	138284	9-3	"	$1.00
9-3	81555	CRIP	46177	9-3	"	$1.00
9-3	81554	CRIP	44842	9-3	"	$1.00
9-3	81553	CRIP	45311	9-3	"	$1.00
9-3	81552	CRIP	43141	9-3	"	$1.00
9-3	81551	CRIP	41590	9-3	"	$1.00
9-4	94642	CRIP	141766	9-3	Hillsdale, Mich.	$1.00
9-4	94641	CN	510951	9-3	"	$1.00
9-4	94640	CRIP	140356	9-3	"	$1.00
9-4	94639	CN	508212	9-3	"	$1.00
9-4	94638	CRIP	141398	9-3	"	$1.00
9-4	94637	CNW	100918	9-3	"	$1.00
9-4	94636	MP	29965	9-3	"	$1.00
9-4	81562	CRIP	44111	9-3	Milwaukee, Wisc.	$1.00
9-5	44870	CRIP	41458	9-4	Enid, Okla.	$1.00
9-5	44869	CRIP	42680	9-4	"	$1.00
9-5	44868	CRIP	141126	9-4	"	$1.00
9-5	44867	CRIP	140114	9-4	"	$1.00
9-5	44866	CRIP	142922	9-4	"	$1.00
9-5	44865	CRIP	140658	9-4	"	$1.00
9-5	44864	CRIP	141673	9-4	"	$1.00
9-4	81634	SOO	38296	9-4	Milwaukee, Wisc.	$1.00
9-5	44872	CRIP	142872	9-5	Enid, Okla.	$1.00
9-6	81718	CRIP	42826	9-5	Milwaukee, Wisc.	$1.00
9-5	44871	CRIP	42926	9-5	Des Moines, Ia.	$1.00
9-5	81690	CNW	138702	9-5	Milwaukee, Wisc.	$1.00
9-5	81689	CNW	109804	9-5	"	$1.00
9-5	81688	CN	416220	9-5	"	$1.00
9-5	81687	CRIP	43723	9-5	"	$1.00
9-5	81686	CRIP	43603	9-5	"	$1.00
9-7	81783	CRIP	156064	9-6	"	$1.00
9-7	45567	CRIP	142520	9-6	Davenport, Iowa.	$1.00
9-7	81782	CRIP	45079	9-6	Milwaukee, Wisc.	$1.00
9-9	45923	NKP	13543	9-6	Davenport, Iowa.	$1.00
9-10	94906	CRIP	40748	9-9	Massillon, Ohio.	$1.00
9-10	46238	BO	271457	9-9	Davenport, Iowa.	$1.00
9-10	46036	CP	246042	9-9	"	$1.00
9-10	46035	CRIP	141356	9-9	"	$1.00
9-10	46237	CRIP	142440	9-9	"	$1.00
9-10	46247	CRIP	141397	9-9	"	$1.00
9-10	46246	MC	81847	9-9	"	$1.00
9-10	46245	Penn	121022	9-9	"	$1.00
9-10	46244	CRIP	141429	9-9	"	$1.00
9-10	46243	CP	429238	9-9	"	$1.00
~~9-10~~	~~46242~~	~~Misc.~~				

21-22

Statement of cars coopered for bulk grain loading at Kansas City, Mo., Kans. during the month of September 1935 for the account of Simonds-Shields-Lonsdale Co.

WAYBILL Date	WAYBILL Number	Car INITIAL	Car NUMBER	DATE COOPERED	DESTINATION	COOPERING CHARGES.
9-10	46242	WStL	18180	9-9	Davenport,Ia.	$1.00
9-10	46241	CP	244001	9-10	"	$1.00
9-10	46240	CRIP	140309	9-10	"	$1.00
9-10	46239	DLW	48435	9-10	"	$1.00
9-12	95033	CRIP	45655	9-11	Massillon,Ohio.	$1.00
9-12	46681	BO	265059	9-11	Des Moines,Ia.	$1.00
9-12	95020	CNW	109124	9-11	Battle Creek,Mic	$1.00
9-16	47761	CP	241859	9-16	Des Moines,Ia.	$1.00
9-16	95192	BO	278253	9-16	Massillon,Ohio.	$1.00
9-18	95235	CRIP	46170	9-17	"	$1.00
9-19	48637	CRIP	45478	9-19	Yukon,Okla.	$1.00
9-19	48636	CRIP	155758	9-19	"	$1.00
9-23	49347	CRIP	141966	9-19	"	$1.00
9-20	95384	CNJ	21504	9-20	Frederick,Md.	$1.00
9-20	95388	Oma	58590	9-20	"	$1.00
9-20	95387	CRIP	141517	9-20	"	$1.00
9-20	95385	CP	247057	9-20	"	$1.00
9-20	95386	BO	275484	9-20	"	$1.00
9-23	49461	GN	31331	9-20	Davenport,Ia.	$1.00
9-23	49460	BO	278244	9-23	"	$1.00
9-23	95460	Oma	36568	9-23	Massillon,Ohio.	$1.00
9-24	49725	GN	9186	9-24	Des Moines,Ia.	$1.00
9-24	95510	PM	81692	9-24	Massillon,Ohio.	$1.00
9-26	50476	SP	88048	9-26	Enid, Okla.	$1.00
9-26	50475	CRIP	41825	9-26	"	$1.00
9-26	50474	CRIP	44633	9-26	"	$1.00
9-26	50473	CRIP	46139	9-26	"	$1.00
9-30	51394	PM	83233	9-30	Davenport,Ia.	$1.00
10-2	51939	SAL	15260	9-30	"	$1.00
10-2	52069	CRIP	141866	9-30	"	$1.00
10-1	51739	CRIP	141657	9-30	"	$1.00
10-1	51738	CRIP	140418	9-30	"	$1.00
10-2	52068	CRIP	140440	9-30	"	$1.00
9-17	48021	CMStP&P	706028	9-11	"	$1.00
9-17	48023	"	713923	9-11	"	$1.00
9-17	48021	"	702403	9-13	"	$1.00

Used for the account of Simmons-Shields-Lonsdale Co.

WAYBILL Date	WAYBILL Number	Car INITIAL	Car NUMBER	DATE COOPERED	DESTINATION	COOPERING CHARGES.
9-10	46242	WStL	18180	9-9	Davenport, Ia.	$1.00
9-10	46241	CP	244001	9-10	"	$1.00
9-10	46240	CRIP	140309	9-10	"	$1.00
9-10	46239	DLW	48435	9-10	"	$1.00
9-12	95035	CRIP	45653	9-11	Massillon, Ohio.	$1.00
9-12	46681	BO	265059	9-11	Des Moines, Ia.	$1.00
9-12	95020	CNW	109124	9-11	Battle Creek, Mic	$1.00
9-16	47761	CP	241859	9-16	Des Moines, Ia.	$1.00
9-16	95192	BO	278253	9-16	Massillon, Ohio.	$1.00
9-18	95235	CRIP	46170	9-17	"	$1.00
9-19	48637	CRIP	45478	9-19	Yukon, Okla.	$1.00
9-19	48636	CRIP	155758	9-19	"	$1.00
9-23	49347	CRIP	141966	9-19	"	$1.00
9-20	95384	CNJ	21504	9-20	Frederick, Md.	$1.00
9-20	95388	Oma	58590	9-20	"	$1.00
9-20	95387	CRIP	141517	9-20	"	$1.00
9-20	95385	CP	247057	9-20	"	$1.00
9-20	95386	BO	275484	9-20	"	$1.00
9-23	49461	GN	31331	9-20	Davenport, Ia.	$1.00
9-23	49460	BO	278244	9-23	"	$1.00
9-23	95468	Oma	36568	9-23	Masillon, Ohio.	$1.00
9-24	49725	GN	9126	9-24	Des Moines, Ia.	$1.00
9-24	95510	PM	81692	9-24	Massillon, Ohio.	$1.00
9-26	50476	SP	88048	9-26	Enid, Okla.	$1.00
9-26	50475	CRIP	41825	9-26	"	$1.00
9-26	50474	CRIP	44633	9-26	"	$1.00
9-26	50473	CRIP	46139	9-26	"	$1.00
9-30	51394	PM	83233	9-30	Davenport, Ia.	$1.00
10-2	51939	SAL	15260	9-30	"	$1.00
10-2	52069	CRIP	141866	9-30	"	$1.00
10-1	51739	CRIP	141657	9-30	"	$1.00
10-1	51738	CRIP	140418	9-30	"	$1.00
10-2	52068	CRIP	140440	9-30	"	$1.00
9-17	48022	CMStP&P	706022	9-11	"	$1.00
9-17	48023	"	713923	9-11	"	$1.00
9-17	48021	"	702403	9-13	"	$1.00
9-16	47762	"	701515	9-13	"	$1.00
9-5	94710	MP	46735	9-4	Nashville, Tenn.	$1.00
9-5	94709	CBQ	117298	9-4	"	$1.00
9-5	94708	MP	21774	9-4	"	$1.00
9-6	94707	CRIP	40710	9-4	"	$1.00
9-6	94731	ATSF	116842	9-4	"	$1.00
9-5	94728	ATSF	118613	9-4	"	$1.00
9-6	94729	ATSF	117277	9-4	"	$1.00
9-6	94730	ATSF	118875	9-4	"	$1.00
9-7	94780	MP	47036	9-6	"	$1.00
9-7	94777	CRI	6366	9-6	"	$1.00
9-7	94778	CBQ	113798	9-6	"	$1.00

18.00

Statement of cars coopered for bulk grain loading at Kansas City, Mo., Kans. during the month of September 1935 for the account of Simonds-Shields-Lonsdale Co.

WAYBILL DATE	WAYBILL NUMBER	CAR INITIAL	CAR NUMBER	DATE COOPERED	DESTINATION	COOPERING CHARGES.
9-7	94779	CBQ	II7780	9-6	Nashville, Tenn.	$1.00
9-9	94819	MP	41011	9-6	"	$1.00
9-9	94820	MP	45660	9-6	"	$1.00
9-9	94821	MP	29584	9-6	"	$1.00
9-9	94822	MP	28233	9-6	"	$1.00
9-10	94910	MP	137746	9-6	"	$1.00
9-10	94909	MP	12785	9-6	"	$1.00
9-10	94908	MP	135274	9-6	"	$1.00
9-10	94907	CMStP&P	716916	9-6	"	$1.00
9-11	94961	MP	10098	9-10	"	$1.00
9-11	94960	MP	22958	9-10	"	$1.00
9-11	94963	TP	60154	9-10	"	$1.00
9-11	94962	CP	129214	9-10	"	$1.00
9-11	95019	MP	12484	9-10	"	$1.00
9-11	95018	MP	26126	9-10	"	$1.00
9-13	95060	CMStP&P	706455	9-10	"	$1.00
9-12	95017	MP	24659	9-10	"	$1.00
9-13	95063	MP	47907	9-10	"	$1.00
9-12	95016	CBQ	132659	9-10	"	$1.00
9-13	95061	CBQ	108261	9-10	"	$1.00
9-13	95062	CMStP&P	712256	9-10	"	$1.00
9-14	95098	ATSF	232708	9-12	"	$1.00
9-14	95099	ATSF	46257	9-12	"	$1.00
9-14	95100	MP	74137	9-13	"	$1.00
9-14	95101	MP	136287	9-13	"	$1.00
9-16	95164	CNW	124762	9-14	"	$1.00
9-16	95162	UP	126404	9-14	"	$1.00
9-16	95163	MP	120321	9-14	"	$1.00
9-16	95161	MP	19229	9-14	"	$1.00

$99.00

Statement of cars coopered for bulk grain loading at Kansas City, Mo.-Kans. during the month of Oct. 1935 for the account of Simonds-Shields-Lonsdale Grain Co. 25-26

Waybill Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charge
10-2	52065	RI	140236	10-2	Davenport, Ia.	$1.00
10-2	52064	RI	43111	10-2	DO	1.00
10-2	52063	RI	41357	10-2	DO	1.00
10-2	95854	RI	42261	10-2	Massillon, Ohio	1.00
10-2	52062	RI	141236	10-2	Davenport, Ia.	1.00
10-2	52067	RI	41878	10-2	DO	1.00
10-2	52066	RI	44091	10-2	DO	1.00
10-2	74456	RI	142748	10-2	Hillsdale, Mich.	1.00
10-2	95850	RI	140293	10-2	DO	1.00
10-2	95851	RI	141038	10-2	DO	1.00
10-2	95853	RI	140158	10-2	DO	1.00
10-2	95852	RI	141936	10-2	DO	1.00
10-3	52350	RI	141336	10-3	Des Moines, Ia.	1.00
10-3	52349	RI	43132	10-3	DO	1.00
10-3	95904	RI	43028	10-3	Londonville, Ohio	1.00
10-5	52919	RI	41789	10-4	Yukon, Okla.	1.00
10-5	52918	RI	43020	10-4	DO	1.00
10-8	53422	RI	140024	10-4	DO	1.00
10-8	96049	CP	245733	10-8	Lockport, N.Y.	1.00
10-9	96105	RI	141899	10-8	DO	1.00
10-8	53604	RI	140464	10-8	Davenport, Ia.	1.00
10-8	53605	RI	142008	10-8	DO	1.00
10-11	54519	RI	141212	10-8	DO	1.00
10-10	96144	RI	44857	10-8	Lockport, N.Y.	1.00
10-10	96146	RI	45651	10-10	Knoxville, Tenn	1.00
10-10	96145	RI	44098	10-10	DO	1.00
10-14	96257	[illegible]	133456	10-14	Massillon, Ohio	1.00
10-14	55036	RI	46074	10-14	Des Moines, Ia.	1.00
10-16	55545	RI	141915	10-15	DO	1.00
10-16	55544	RI	142720	10-15	DO	1.00
10-16	55750	RI	141908	10-16	Davenport, Ia.	1.00
10-16	55751	RI	141174	10-16	DO	1.00
~~10-22~~	~~96057~~	~~RI~~	~~142176~~	~~10-18~~	~~Feeders Supply Co.~~	~~2.25~~
~~10-21~~	~~96058~~	~~RI~~	~~140798~~	~~10-18~~	~~Midland Mills~~	~~2.25~~
~~10-23~~	~~DO~~	~~[illegible]~~	~~95434~~	~~10-18~~	~~DO~~	~~2.25~~
~~10-23~~	~~DO~~	~~RI~~	~~142601~~	~~10-18~~	~~DO~~	~~2.25~~
~~10-20~~	~~96059~~	~~RI~~	~~140466~~	~~10-21~~	~~DO~~	~~2.25~~
~~10-25~~	~~DO~~	~~RI~~	~~142109~~	~~10-21~~	~~DO~~	~~2.25~~
~~10-25~~	~~DO~~	~~RI~~	~~141601~~	~~10-21~~	~~DO~~	~~2.25~~
10-21	77864	RI	45576	10-21	Battle Creek, Mich.	1.00
10-21	56884	RI	142904	10-21	Okla. City, Okla.	1.00

Waybill Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charge
10-2	52065	RI	140236	10-2	Davenport, Ia.	$1.00
10-2	52064	RI	43111	10-2	DO	1.00
10-2	52063	RI	41357	10-2	DO	1.00
10-2	95854	RI	42261	10-2	Massillon, Ohio	1.00
10-2	52062	RI	141236	10-2	Davenport, Ia.	1.00
10-2	52067	RI	41878	10-2	DO	1.00
10-2	52066	RI	44091	10-2	DO	1.00
10-2	74456	RI	142748	10-2	Hillsdale, Mich.	1.00
10-2	95850	RI	140293	10-2	DO	1.00
10-2	95851	RI	141038	10-2	DO	1.00
10-2	95853	RI	140158	10-2	DO	1.00
10-2	95852	RI	141936	10-2	DO	1.00
10-3	52350	RI	141336	10-3	Des Moines, Ia.	1.00
10-3	52349	RI	43132	10-3	DO	1.00
10-3	95904	RI	43028	10-3	Londonville, Ohio	1.00
10-5	52919	RI	41789	10-4	Yukon, Okla.	1.00
10-5	52918	RI	43020	10-4	DO	1.00
10-8	53422	RI	140024	10-4	DO	1.00
10-8	96049	CP	245733	10-8	Lockport, N.Y.	1.00
10-9	96105	RI	141899	10-8	DO	1.00
10-8	53604	RI	140464	10-8	Davenport, Ia.	1.00
10-8	53605	RI	142008	10-8	DO	1.00
10-11	54519	RI	141212	10-8	DO	1.00
10-10	96144	RI	44857	10-8	Lockport, N.Y.	1.00
10-10	96146	RI	45651	10-10	Knoxville, Tenn	1.00
10-10	96145	RI	44098	10-10	DO	1.00
10-14	96257	[illegible]	133456	10-14	Massillon, Ohio	1.00
10-14	55036	RI	46074	10-14	Des Moines, Ia.	1.00
10-16	55545	RI	141915	10-15	DO	1.00
10-16	55544	RI	142720	10-15	DO	1.00
10-16	55750	RI	141908	10-16	Davenport, Ia.	1.00
10-16	55751	RI	141174	10-16	DO	1.00
~~10-22~~	~~98857~~	~~RI~~	~~142176~~	~~10-18~~	~~Feedere Supply Co.~~	~~2.25~~ #
~~10-23~~	~~98858~~	~~RI~~	~~140708~~	~~10-18~~	~~Midland Mills~~	~~2.25~~
~~10-23~~	~~DO~~	~~WLE~~	~~95434~~	~~10-18~~	~~DO~~	~~2.25~~
~~10-23~~	~~DO~~	~~RI~~	~~142601~~	~~10-18~~	~~DO~~	~~2.25~~
~~10-20~~	~~98859~~	~~RI~~	~~140468~~	~~10-21~~	~~DO~~	~~2.25~~
~~10-25~~	~~DO~~	~~RI~~	~~140180~~	~~10-21~~	~~DO~~	~~2.25~~
~~10-25~~	~~DO~~	~~RI~~	~~141681~~	~~10-21~~	~~DO~~	~~2.25~~
10-21	77864	RI	45576	10-21	Battle Creek, Mich.	1.00
10-21	56884	RI	142904	10-21	Okla. City, Okla.	1.00
10-21	56882	RI	45077	10-21	DO	1.00
10-21	56883	RI	45734	10-21	DO	1.00
10-22	57141	RI	140979	10-21	Davenport, Ia.	1.00
10-21	56880	RI	141831	10-21	DO	1.00
						3[illegible].00

Simonds-Shields-Lonsdale Grain Co. Oct.1935

Waybill Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charge
10-21	56879	RI	140225	10-21	Davenport, Ia.	$1.00
10-21	56881	RI	140780	10-21	DO	1.00
10-22	57140	WLE	25840	10-21	DO	1.00
10-23	57268	NYC	99590	10-21	DO	1.00
10-23	57269	RI	140560	10-21	DO	1.00
10-23	57270	RI	141843	10-21	DO	1.00
10-22	57139	RI	46119	10-22	Des Moines, Ia.	1.00
10-28	96710	RI	141164	10-24	Frederick, Md.	1.00
10-28	96709	RI	140690	10-24	DO	1.00
10-25	96676	RI	140106	10-24	DO	1.00
10-25	96677	RI	141838	10-24	DO	1.00
10-25	96678	RI	142967	10-24	DO	1.00
10-26	96505	RI	141534	10-25	Hillsdale, Mich	1.00
10-26	96564	RI	141846	10-25	DO	1.00
10-26	96563	RI	142901	10-25	DO	1.00
10-26	96562	CP	241301	10-25	DO	1.00
10-26	96561	CN	133168	10-25	DO	1.00
~~10-28~~	~~96560~~	~~RI~~	~~141468~~	~~10-28~~	~~Milw. Elevator~~	~~0.25~~
10-30	96833	B-4	49306	10-30	Frederick, Md.	1.00
10-30	96834	CP	242257	10-30	DO	1.00
10-30	96835	NYC	98253	10-30	DO	1.00
11-1	59589	RI	141105	10-30	Okla. City, Okla.	1.00
11-1	59585	RI	142296	10-30	DO	1.00
11-1	59586	RI	140380	10-30	DO	1.00
11-1	59587	RI	142666	10-30	DO	1.00
11-1	59588	RI	142703	10-30	DO	1.00
~~10-3~~	~~910~~	~~B-4~~	~~57624~~	~~10-3~~	~~Crostown to MP~~	~~0.25~~
~~10-3~~	~~"~~	~~CP~~	~~10015~~	~~10-3~~	~~DO~~	~~0.25~~
~~10-3~~	~~"~~	~~CP~~	~~242781~~	~~10-3~~	~~DO~~	~~0.25~~
~~10-3~~	~~"~~	~~B-4~~	~~58008~~	~~10-3~~	~~DO~~	~~0.25~~
~~11-2~~	~~986~~	~~RI~~	~~140478~~	~~10-30~~	~~Crostown to Milw.~~	~~0.25~~
~~11-2~~	~~"~~	~~RI~~	~~142780~~	~~10-30~~	~~DO~~	~~0.25~~

25.00

$----Crostown Cars.

Statement of cars coopered for bulk grain loading at Kansas City Mo-Kans during month of Nov 1935 for account of Simonds-Shields-Lonsdale Grain Co.

Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charges
11-4	40316	RI	140954	11-4	Des Moines Ia	$1.00
~~11-6~~	~~90661~~	~~RI~~	~~141849~~	~~11-6~~	~~Midland Mills~~	~~0.25~~ #
~~11-6~~	~~90661~~	~~RI~~	~~142667~~	~~11-6~~	~~Do~~	~~0.25~~ #
~~11-6~~	~~90661~~	~~RI~~	~~142677~~	~~11-6~~	~~Do~~	~~0.25~~ #
~~11-6~~	~~90661~~	~~RI~~	~~140160~~	~~11-6~~	~~Do~~	~~0.25~~ #
~~11-6~~	~~90661~~	~~RI~~	~~141788~~	~~11-6~~	~~Do~~	~~0.25~~ #
11-6	60769	RI	141818	11-6	Frederick Md.	1.00
11-6	60768	RI	140069	11-6	Do	1.00
11-6	90314	RI	140355	11-6	Hillsdale Mch	1.00
11-6	90313	RI	142872	11-6	Do	1.00
11-6	90312	RI	142726	11-6	Do	1.00
11-6	90311	RI	142072	11-6	Do	1.00
11-6	90310	RI	142555	11-6	Do	1.00
11-12	42229	MILW	716596	11-12	Des Moines Ia	1.00
11-12	42230	DRG	47481	11-12	Do	1.00
11-12	422 1	CN	507036	11-12	Do	1.00
11-12	42228	RI	41580	11-12	Do	1.00
11-14	42573	RI	140620	11-13	Enid Okla	1.00
11-14	42574	RI	140981	11-13	Do	1.00
11-14	42572	RI	140303	11-13	Do	1.00
11-14	42571	RI	141746	11-13	Do	1.00
11-14	42570	RI	141249	11-13	Do	1.00
11-16	90439	RI	140567	11-15	Hillsdale Mch	1.00
11-16	90440	RI	142877	11-15	Do	1.00
11-16	43160	RI	140169	11-15	Oklahoma City Ok	1.00
11-16	43161	RI	141758	11-15	Do	1.00
11-16	43162	RI	141291	11-15	Do	1.00
11-16	43163	RI	142129	11-15	Do	1.00
11-16	43164	RI	140107	11-15	Do	1.00
11-16	90441	RI	141873	11-15	Hillsdale Mch	1.00
11-16	90442	RI	140667	11-15	Do	1.00
11-16	90443	RI	142111	11-15	Do	1.00
11-15	43061	RI	43857	11-15	Enid Okla	1.00
11-15	43062	RI	46106	11-15	Do	1.00
11-15	43159	RI	44657	11-15	Do	1.00
11-20	90622	RI	141348	11-18	Frederick Md	1.00
11-19	90579	RI	140574	11-18	Do	1.00
11-19	90580	RI	141476	11-18	Do	1.00
11-20	90623	RI	45525	11-18	Do	1.00
11-20	90624	RI	41010	11-18	Do	1.00
11-23	44860	RI	141273	11-22	Oklahoma City Ok	1.00
11-23	44859	RI	140025	11-22	Do	1.00
11-23	44858	RI	140392	11-22	Do	1.00
11-23	44857	RI	140636	11-22	Do	1.00
11-23	44856	RI	141621	11-22	Do	1.00
11-22	44682	RI	142418	11-22	Enid Okla	1.00

Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charges
11-4	40316	RI	140954	11-4	Des Moines Ia	$1.00
~~11-6~~	~~90661~~	~~RI~~	~~141848~~	~~11-6~~	~~Midland Mills~~	~~2.25~~ #
~~11-6~~	~~90661~~	~~RI~~	~~140607~~	~~11-6~~	~~Do~~	~~2.25~~ #
~~11-6~~	~~90661~~	~~RI~~	~~142077~~	~~11-6~~	~~Do~~	~~2.25~~ #
~~11-6~~	~~90661~~	~~RI~~	~~140160~~	~~11-6~~	~~Do~~	~~2.25~~ #
~~11-6~~	~~90661~~	~~RI~~	~~141788~~	~~11-6~~	~~Do~~	~~2.25~~ #
11-6	60769	RI	141818	11-6	Frederick Md.	1.00
11-6	60768	RI	140069	11-6	Do	1.00
11-6	90314	RI	140355	11-6	Hillsdale Mch	1.00
11-6	90313	RI	142872	11-6	Do	1.00
11-6	90312	RI	142726	11-6	Do	1.00
11-6	90311	RI	142072	11-6	Do	1.00
11-6	90310	RI	142555	11-6	Do	1.00
11-12	42229	MILW	716596	11-12	Des Moines Ia	1.00
11-12	42230	DRG	47481	11-12	Do	1.00
11-12	422 1	CN	507036	11-12	Do	1.00
11-12	42228	RI	41580	11-12	Do	1.00
11-14	42573	RI	140620	11-13	Enid Okla	1.00
11-14	42574	RI	140981	11-13	Do	1.00
11-14	42572	RI	140303	11-13	Do	1.00
11-14	42571	RI	141746	11-13	Do	1.00
11-14	42570	RI	141249	11-13	Do	1.00
11-16	90439	RI	140567	11-15	Hillsdale Mch	1.00
11-16	90440	RI	142877	11-15	Do	1.00
11-16	43160	RI	140169	11-15	Oklahoma City Ok	1.00
11-16	43161	RI	141758	11-15	Do	1.00
11-16	43162	RI	141281	11-15	Do	1.00
11-16	43163	RI	142129	11-15	Do	1.00
11-16	43164	RI	140107	11-15	Do	1.00
11-16	90441	RI	141873	11-15	Hillsdale Mch	1.00
11-16	90442	RI	140667	11-15	Do	1.00
11-16	90443	RI	142111	11-15	Do	1.00
11-15	43061	RI	43857	11-15	Enid Okla	1.00
11-15	43062	RI	46106	11-15	Do	1.00
11-15	43159	RI	44657	11-15	Do	1.00
11-20	90622	RI	141248	11-18	Frederick Md	1.00
11-19	90579	RI	140574	11-18	Do	1.00
11-19	90580	RI	141476	11-18	Do	1.00
11-20	90623	RI	45525	11-18	Do	1.00
11-20	90624	RI	41010	11-18	Do	1.00
11-23	44860	RI	141273	11-22	Oklahoma City Ok	1.00
11-23	44859	RI	140025	11-22	Do	1.00
11-23	44858	RI	140392	11-22	Do	1.00
11-23	44857	RI	140636	11-22	Do	1.00
11-23	44856	RI	141621	11-22	Do	1.00
11-22	44682	48	142418	11-22	Enid Okla	1.00

41.00

Cross town

Sheet 2- Simonds-Shields-Lonsdale Grain Co. 31-32

Waybill Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charges
~~11-25~~	~~00000~~	~~GW~~	~~00000~~	~~11-25~~	~~Enid Okla~~	~~$2.00~~ #
~~11-25~~	~~00000~~	~~GW~~	~~000000~~	~~11-25~~	~~Do~~	~~2.00~~ #
~~11-25~~	~~00000~~	~~MP~~	~~00000~~	~~11-25~~	~~Do~~	~~2.00~~ #
~~11-25~~	~~00000~~	~~AV~~	~~000000~~	~~11-25~~	~~Do~~	~~2.00~~ #
~~11-25~~	~~00000~~	~~UP~~	~~000000~~	~~11-25~~	~~Do~~	~~2.00~~ #
~~11-25~~	~~00000~~	~~RI~~	~~000000~~	~~11-25~~	~~Do~~	~~2.00~~ #
~~11-25~~	~~00000~~	~~RI~~	~~000000~~	~~11-25~~	~~Do~~	~~2.00~~ #
~~11-25~~	~~00000~~	~~RI~~	~~000000~~	~~11-25~~	~~Do~~	~~2.00~~ #
11-26	45330	RI	141732	11-25	Enid Okla	1.00
11-26	45329	RI	141182	11-25	Do	1.00
11-26	45328	RI	142040	11-25	Do	1.00
11-26	45542	RI	44209	11-26	Do	1.00
11-29	~~00000~~	RI				
11-29	90911	RI	43561	11-29	Battle Creek Mc	1.00
11-20	62983	MILW	706462	11-19	Herington Kans	1.00
11-29	64386	MILW	708925	11-29	Greenwood Mo	1.00
~~11-29~~	~~00000~~	~~RI~~	~~000000~~	~~11-27~~	~~Ruby Patrick~~	~~2.00~~ #

7.-

Cross town

Statement of cars coopered for bulk grain loading at Kansas City, Mo., Kansas during the month of December 1934 for the account of Simonds Shields Lonsdale Grain Company..

Waybill Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charge
12-4	91077	RI	140396	12-4	Hillsdale,Mich	$1.00
12-4	91076	SaL	1685[illegible]	12-4	" "	1.00
12-4	91075	RI	140006	12-4	" "	1.00
12-4	91081	RI	140039	12-4	" "	1.00
12-4	91080	RI	140153	12-4	" "	1.00
12-4	91079	RI	43319	12-4	" "	1.00
12-7	91284	RI	142317	12-6	" "	1.00
12-7	91285	RI	142553	12-6	" "	1.00
12-7	91286	RI	141581	12-6	" "	1.00
12-7	91287	RI	142563	12-6	" "	1.00
12-7	91288	RI	142949	12-6	" "	1.00
12-9	48054	RI	41987	12-9	Des Moines,Iowa	1.00
12-14	49190	RI	141402	12-12	Mpls,Minn.	1.00
12-14	49189	RI	142506	12-12	" "	1.00
12-14	49188	RI	140365	12-12	" "	1.00
12-14	86427	RI	140010	12-12	" "	1.00
12-14	86426	RI	45738	12-12	" "	1.00
12-14	86425	RI	141781	12-13	Knoxville,Tenn	1.00
12-14	49187	RI	142789	12-13	Okla City,Okla.	1.00
12-14	49186	RI	142016	12-13	" "	1.00
12-14	86428	RI	140149	12-12	Mpls,Minn	1.00
12-14	86424	RI	141629	12-13	Knoxville,Tenn	1.00
12-14	49268	MP	120908	12-13	Des Moines,Iowa	1.00
12-17	91770	CGW	85160	12-18	Hillsdale,Mich	1.00
12-17	91771	RI	142603	12-18	" "	1.00
12-17	91772	RI	140767	12-18	" "	1.00
12-17	91773	CP	244665	12-18	" "	1.00
12-17	91774	CP	245099	12-18	" "	1.00
12-17	91775	CP	245577	12-18	" "	1.00
12-24	91927	RI	133905	12-24	Battle Creek,Mich	1.00
12-26	51272	CP	207562	12-26	Des Moines,Iowa	1.00
~~12-31~~	~~[illegible]~~	~~RI~~	~~142546~~	~~12-27~~	~~Norris Elevator~~	~~1.00~~
~~12-31~~	~~[illegible]~~	~~RI~~	~~140614~~	~~12-27~~	~~" "~~	~~2.00~~
~~12-31~~	~~[illegible]~~	~~MPC~~	~~[illegible]~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~[illegible]~~	~~RI~~	~~[illegible]~~	~~12-27~~	~~" "~~	~~2.00~~
~~12-31~~	~~[illegible]~~	~~CP~~	~~244480~~	~~12-27~~	~~" "~~	~~2.00~~
~~12-31~~	~~[illegible]~~	~~RI~~	~~140181~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~[illegible]~~	~~RI~~	~~140[illegible]~~	~~12-27~~	~~" "~~	~~2.00~~
~~12-31~~	~~[illegible]~~	~~RI~~	~~140[illegible]~~	~~12-27~~	~~" "~~	~~2.00~~
~~12-31~~	~~[illegible]~~	~~[illegible]~~	~~[illegible]~~	~~12-27~~	~~" "~~	~~1.00~~

Waybill Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charge
12-4	91077	RI	140396	12-4	Hillsdale,Mich	$1.00
12-4	91076	SaL	16857	12-4	" "	1.00
12-4	91075	RI	140006	12-4	" "	1.00
12-4	91081	RI	140039	12-4	" "	1.00
12-4	91080	RI	140153	12-4	" "	1.00
12-4	91079	RI	43319	12-4	" "	1.00
12-7	91284	RI	142317	12-6	" "	1.00
12-7	91285	RI	142558	12-6	" "	1.00
12-7	91286	RI	141581	12-6	" "	1.00
12-7	91287	RI	142503	12-6	" "	1.00
12-7	91288	RI	142949	12-6	" "	1.00
12-9	48054	RI	41987	12-9	Des Moines,Iowa	1.00
12-14	49190	RI	141402	12-12	Mpls,Minn.	1.00
12-14	49189	RI	140506	12-12	" "	1.00
12-14	49188	RI	140365	12-12	" "	1.00
12-14	86427	RI	140010	12-12	" "	1.00
12-14	86426	RI	45738	12-12	" "	1.00
12-14	86425	RI	141781	12-13	Knoxville,Tenn	1.00
12-14	49187	RI	142789	12-13	Okla City,Okla.	1.00
12-14	49186	RI	142016	12-13	" "	1.00
12-14	86428	RI	140149	12-12	Mpls,Minn	1.00
12-14	86424	RI	141629	12-13	Knoxville,Tenn	1.00
12-14	49268	MP	120908	12-13	Des Moines,Iowa	1.00
12-17	91770	CGW	85160	12-18	Hillsdale,Mich	1.00
12-17	91771	RI	142603	12-18	" "	1.00
12-17	91772	RI	140767	12-18	" "	1.00
12-17	91773	CP	244665	12-18	" "	1.00
12-17	91774	CP	245099	12-18	" "	1.00
12-17	91775	CP	245577	12-18	" "	1.00
12-24	91927	RI	133905	12-24	Battle Creek,Mich	1.00
12-26	51272	CP	207562	12-26	Des Moines,Iowa	1.00
~~12-31~~	~~90486~~	~~RI~~	~~142646~~	~~12-27~~	~~Norris Elevator~~	~~1.00~~
~~12-31~~	~~90484~~	~~RI~~	~~140614~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90485~~	~~NYC~~	~~93696~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90483~~	~~RI~~	~~140038~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90482~~	~~CP~~	~~244450~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90446~~	~~RI~~	~~140120~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90487~~	~~RI~~	~~140305~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90488~~	~~RI~~	~~140301~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90489~~	~~RI~~	~~140252~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90490~~	~~RI~~	~~142441~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90492~~	~~RI~~	~~140901~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90493~~	~~RI~~	~~140611~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90494~~	~~RI~~	~~140424~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90495~~	~~RI~~	~~140494~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90496~~	~~B4~~	~~5[illegible]517~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90497~~	~~PM~~	~~49973~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90498~~	~~RI~~	~~141760~~	~~12-27~~	~~" "~~	~~1.00~~
~~12-31~~	~~90499~~	~~CP~~	~~245432~~	~~12-27~~	~~" "~~	~~1.00~~

31.00

Waybill Date	Waybill Number	Car Initial	Car Number	Date Coopered	Destination	Coopering Charge
[illegible]						
12-5	65574	Milw	708829 ✓	12-4	White City,Kans	1.00
12-7	91302	Milw	706682 ✓	12-7	Capitan,New Mex	1.00
12-9	66128	Milw	711926 ✓	12-7	Herington,Kans	1.00
12-14	49134	Milw	701405 ✓	12-13	Okla City,Okla	1.00

Date	Number	Initial	Number	Loaded	Destination	Charge
[illegible]						
12-5	65574	Milw	708829 ✓	12-4	White City,Kans	1.00
12-7	91302	Milw	706682 ✓	12-7	Capitan,New Mex	1.00
12-8	66128	Milw	711926 ✓	12-7	Herington,Kans	1.00
12-14	49134	Milw	701405 ✓	12-13	Okla City,Okla	1.00
12-17	49389	Milw	705212 ✓	12-16	Lincolnville,Kans	1.00
12-20	67908	Milw	706810 ✓	12-19	White City,Kans	1.00
12-20	67910	Milw	709596 ✓	12-19	Hutchinson,Kans	1.00
12-23	68176	Milw 7	711494 ✓	12-20	Okarche,Okla	1.00
12-26	68469	Milw	708700 ✓	12-23	Antelope,Kans	1.00
12-30	68912	Milw	713814 ✓	12-27	Okarche,Okla.	1.00
						10.-

4 Cross Town

Statement of cars coopered for bulk grain loading at Kansas City, Mo-Kansas during January 1936 for account of Simonds Shields Lonsdale Grain Co-

Date	Car Number	Initial	Number	Date Coopered	Destination	Coopering Charge
I-4	92223	R I	41126	I-3	Monroe Mich	$2.00
I-6	52564	R I	44084	I-6	Des Moines,Ia	I.00
I-6	52570	R I	44759	I-6	Enid,Okla	I.00
I-6	52571	R I	41590	I-6	"	I.00
I-7	92467	R I	158067	I-7	Huntington W Va	I.00
I-7	92468	R I	42800	I-7	"	I.00
I-13	55798	R I	I41238	I-13	Shawnee,Okla	I.00
I-13	55799	R I	I41244	I-13	"	I.00
I-13	55800	R I	I41424	I-13	"	I.00
I-13	55801	R I	I42091	I-13	"	I.00
I-13	55797	R I	I58511	I-13	Des Moines,Ia	I.00
I-13	92725	R I	503807	I-13	Hillsdale Mich	I.00
I-13	92722	CP	241970	I-13	"	I.00
I-13	92721	NYC	I80076	I-13	"	I.00
I-13	92726	R I	I40586	I-13	"	I.00
I-13	92723	R I	I41695	I-13	"	I.00
I-13	92724	R I	43822	I-13	"	I.00
I-14	54099	R I	I41283	I-14	Shawnee,Okla	I.00
I-15	92724	R I	I55678	I-15	Huntington W Va	I.00
I-17	92881	R I	I42405	I-17	Hilladale Mich	I.00
I-17	92882	R I	I41020	I-17	"	I.00
I-17	92885	R I	I40907	I-17	"	I.00
I-17	92884	R I	I40243	I-17	"	I.00
I-17	92885	R I	865560	I-17	"	I.00
I-20	92925	M P	30009	I-17	Detroit Miahe	I.00
I-20	92965	NW	42110	I-20	Huntington W Va	I.00
I-20	92954	R I	I40808	I-20	Massilion Ohio	I.00
I-24	56111	CNW	I24744	I-24	Des Moines, Ia	I.00
I-24	93190	R I	I41750	I-24	Ft Worth Texas	I.00
I-24	93191	MoP	95222	I-24	"	I.00
I-24	93192	MoP	95665	I-24	"	I.00
I-24	93189	R I	I42844	I-24	"	I.00
I-24	93188	R I	I41206	I-24	"	I.00
I-24	93193	R I	I57667	I-24	Hilladale Mich	I.00
I-24	93194	R I	I40725	I-24	"	I.00
I-24	93195	R I	IC0361	I-24	"	I.00
I-25	93214	R I	I40015	I-24	"	I.00
I-25	93215	R I	I40570	I-24	"	I.00
I-25	93216	R I	IC0253	I-24	"	I.00
I-28	93355	R I	I41259	I-28	"	I.00
I-28	93354	R I	I41719	I-28	"	I.00
I-28	93353	R I	I41656	I-28	"	I.00
				I-28	"	I.00

Date	Car Number	Initial	Number	Date Covered	Destination	Coopering Charge
I-4	92522	R I	4II26	I-3	Monroe Mich	$2.00
I-6	52564	R I	44084	I-6	Des Moines,Ia	I.00
I-6	52570	R I	44750	I-6	Enid,Okla	I.00
I-6	52571	R I	41590	I-6	"	I.00
I-7	92467	R I	I50067	I-7	Huntington W Va	I.00
I-7	92468	R I	42000	I-7	"	I.00
I-13	52798	R I	I4I288	I-13	Shawnee,Okla	I.00
I-13	52799	R I	I4I244	I-13	"	I.00
I-13	52800	R I	I4I424	I-13	"	I.00
I-13	52801	R I	I42091	I-13	"	I.00
I-13	52797	R I	I505II	I-13	Des Moines,Ia	I.00
I-13	92723	R I	503207	I-13	Millsdale Mich	I.00
I-13	92722	GP	24I970	I-13	"	I.00
I-13	92721	NYC	I80076	I-13	"	I.00
I-13	92726	R I	I40566	I-13	"	I.00
I-13	92725	R I	I4I685	I-13	"	I.00
I-13	92724	R I	43222	I-13	"	I.00
I-14	54099	R I	I4I285	I-14	Shawnee,Okla	I.00
I-15	92724	R I	I55678	I-15	Huntington W Va	I.00
I-17	92881	R I	I42403	I-17	Millsdale Mich	I.00
I-17	92882	R I	I4I020	I-17	"	I.00
I-17	92883	R I	I40907	I-17	"	I.00
I-17	92884	R I	I40843	I-17	"	I.00
I-17	92885	R I	865560	I-17	"	I.00
I-20	92935	M P	30009	I-17	Detroit Miahe	I.00
I-20	92965	NW	42II0	I-20	Huntington W Va	I.00
I-20	92954	R I	I40908	I-20	Massilion Ohio	I.00
I-24	56III	CBW	I24744	I-24	Des Moines, Ia	I.00
I-24	95I90	R I	I4I750	I-21	Ft Worth Texas	I.00
I-24	95I9I	MoP	95822	I-24	"	I.00
I-24	95I92	MoP	95665	I-24	"	I.00
I-24	95I89	R I	I42844	I-24	"	I.00
I-24	95I88	R I	I4I206	I-24	"	I.00
I-24	95I93	R I	I57667	I-24	Millsdale Mich	I.00
I-24	95I94	R I	I40725	I-24	"	I.00
I-24	95I95	R I	I00361	I-24	"	I.00
I-25	95214	R I	I40013	I-24	"	I.00
I-25	95215	R I	I40570	I-24	"	I.00
I-25	95216	R I	I00253	I-24	"	I.00
I-28	95355	R I	I4I259	I-28	"	I.00
I-28	95354	R I	I4I719	I-28	"	I.00
I-28	95353	R I	I4I656	I-28	"	I.00
I-28	95352	R I	I42851	I-28	"	I.00
I-28	95351	R I	I42663	I-28	"	I.00
I-28	95350	R I	I4I036	I-28	"	I.00
I-28	95356	R I	I42496	I-28	"	I.00
I-28	95357	R I	I4II57	I-28	"	I.00
I-28	95796	R I	I42598	I-28	"	I.00
I-28	95358	R I	I42223	I-28	"	I.00

Statement of cars coopered for balk grain loading at Kansas City, Mo-Kansas during January 1936 for account of Simonds Shields Lonsdale Grain [redacted]

Waybill Date	Number	Car Initial	Number	Date Coopered	Destination	Coopering Charge
I-6	52565	MILW	709154	I-4	Davenport Ia.	$1.00
I-6	52562	MILW	708821	I-6	"	1.00
I-6	52666	MILW	702697	I-6	"	1.00
I-6	52668	MILW	714039	I-6	"	1.00
I-9	60569	MILW	705430	I-7	Paxico Kans	1.00
I-17	62010	MILW	708669	I-16	Waldren, Kans	1.00
I-17	54826	MILW	709097	I-16	Caldwell Kans	1.00
I-21	55376	MILW	705670	I-20	White City Kans	1.00
I-31	64323	MILW	702535	I-31	Okla City, Okla	1.00
I-29	57050	MILW	706796	I-29	Des Moines Ia	1.00

$10.00

Statement of cars coopered for bulk grain loading at Kansas City, Mo., Kans. during the month of February 1936 for account of the Simonds-Shields-Lonsdale Grain Company.

WAYBILL Date	WAYBILL Number	CAR Initial	CAR Number	Date Coopered	Destination	Coopering Charges
~~2-4~~	~~98435~~	~~CRIP~~	~~I41694~~	~~2-3~~	~~Midland Mill~~	~~$0.25~~
~~2-4~~	~~98436~~	~~CRIP~~	~~I41689~~	~~2-3~~	~~"~~	~~0.25~~
~~2-4~~	~~98436~~	~~CRIP~~	~~I41145~~	~~2-3~~	~~"~~	~~0.25~~
~~2-4~~	~~98436~~	~~CRIP~~	~~I40471~~	~~2-4~~	~~"~~	~~0.25~~
~~2-4~~	~~98436~~	~~CRIP~~	~~I42251~~	~~2-4~~	~~"~~	~~0.25~~
2-4	93659	CRIP	I42889	2-3	Treichlers, Pa.	I.00
2-3	93630	CRIP	I42428	2-3	Hillsdale, Mich.	I.00
2-3	93626	CRIP	I42590	2-3	"	I.00
2-3	93627	CRIP	I42600	2-3	"	I.00
2-3	93628	CRIP	I42241	2-3	"	I.00
2-3	93629	CRIP	I41823	2-3	"	I.00
2-4	93698	CRIP	I40336	2-4	"	I.00
2-4	93697	CRIP	I40520	2-4	"	I.00
2-4	93696	CRIP	I40873	2-4	"	I.00
2-4	93695	CRIP	I40772	2-4	"	I.00
2-4	93694	CRIP	I40590	2-4	"	I.00
2-4	93693	CRIP	45273	2-4	"	I.00
2-4	58186	CRIP	I33289	2-4	Des Moines, Ia.	I.00
2-1	57631	CRIP	42851	2-1	Yukon, Okla.	I.00
2-7	58950	CRIP	I42460	2-7	Des Moines, Ia.	I.00
2-7	58949	CRIP	I41144	2-7	"	I.00
2-10	59306	CRIP	44942	2-10	"	I.00
2-10	93942	CRIP	I40653	2-10	Hillsdale, Mich.	I.00
2-10	93941	CRIP	I40707	2-10	"	I.00
2-10	93940	CRIP	I42678	2-10	"	I.00
2-10	93939	CRIP	I42038	2-10	"	I.00
2-10	93943	CRIP	I41663	2-10	"	I.00
2-10	93938	CRIP	40701	2-10	Middlesville, Mich.	I.00
2-11	94003	CP	230258	2-11	Hillsdale, Mich.	I.00
2-11	93999	CRIP	I41781	2-11	"	I.00
2-11	94000	CRIP	I41041	2-11	"	I.00
2-11	94002	CRIP	I42467	2-11	"	I.00
2-11	94001	CRIP	I42980	2-11	"	I.00
2-11	93991	CRIP	I41489	2-11	Knoxville, Tenn.	I.00
2-11	93990	CRIP	I33541	2-11	"	I.00
2-11	93989	CRIP	I57552	2-11	"	I.00
2-13	59931	CRIP	I41218	2-11	Des Moines, Ia.	I.00
2-13	59933	CRIP	I42504	2-11	"	I.00
2-13	59932	CRIP	I42649	2-11	"	I.00
2-14	94117	CRIP	I42641	2-11	Massillon, Ohio.	I.00

Grain Company.

WAYBILL Date	WAYBILL Number	CAR Initial	CAR Number	Date Coopered	Destination	Coopering Charges
~~2-4~~	~~98456~~	~~CRIP~~	~~I41694~~	~~2-5~~	~~Midland Mill~~	~~$1.00~~
~~2-4~~	~~98456~~	~~CRIP~~	~~I41668~~	~~2-5~~	~~"~~	~~1.00~~
~~2-4~~	~~98456~~	~~CRIP~~	~~I41186~~	~~2-5~~	~~"~~	~~1.00~~
~~2-4~~	~~98456~~	~~CRIP~~	~~I40471~~	~~2-4~~	~~"~~	~~1.00~~
~~2-4~~	~~98456~~	~~CRIP~~	~~I42851~~	~~2-4~~	~~"~~	~~1.00~~
2-4	93659	CRIP	I42889	2-3	Treichlers, Pa.	1.00
2-3	93630	CRIP	I42428	2-3	Hillsdale, Mich.	1.00
2-3	93626	CRIP	I42590	2-3	"	1.00
2-3	93627	CRIP	I42600	2-3	"	1.00
2-3	93628	CRIP	I42241	2-3	"	1.00
2-3	93629	CRIP	I41823	2-3	"	1.00
2-4	93698	CRIP	I40336	2-4	"	1.00
2-4	93697	CRIP	I40520	2-4	"	1.00
2-4	93696	CRIP	I40873	2-4	"	1.00
2-4	93695	CRIP	I40772	2-4	"	1.00
2-4	93694	CRIP	I40590	2-4	"	1.00
2-4	93693	CRIP	45273	2-4	"	1.00
2-4	58186	CRIP	I33289	2-4	Des Moines, Ia.	1.00
2-1	57631	CRIP	42831	2-1	Yukon, Okla.	1.00
2-7	58950	CRIP	I42460	2-7	Des Moines, Ia.	1.00
2-7	58949	CRIP	I41144	2-7	"	1.00
2-10	59306	CRIP	44942	2-10	"	1.00
2-10	93942	CRIP	I40653	2-10	Hillsdale, Mich.	1.00
2-10	93941	CRIP	I40707	2-10	"	1.00
2-10	93940	CRIP	I42678	2-10	"	1.00
2-10	93939	CRIP	I42038	2-10	"	1.00
2-10	93943	CRIP	I41663	2-10	"	1.00
2-10	93938	CRIP	40701	2-10	Middlesville, Mich.	1.00
2-11	94003	CP	230258	2-11	Hillsdale, Mich.	1.00
2-11	93999	CRIP	I41781	2-11	"	1.00
2-11	94000	CRIP	I41041	2-11	"	1.00
2-11	94002	CRIP	I42467	2-11	"	1.00
2-11	94001	CRIP	I42980	2-11	"	1.00
2-11	93991	CRIP	I41489	2-11	Knoxville, Tenn.	1.00
2-11	93990	CRIP	I33541	2-11	"	1.00
2-11	93989	CRIP	I57552	2-11	"	1.00
2-13	59931	CRIP	I41218	2-11	Des Moines, Ia.	1.00
2-13	59933	CRIP	I42504	2-11	"	1.00
2-13	59932	CRIP	I42649	2-11	"	1.00
2-14	94117	CRIP	I42641	2-11	Massillon, Ohio.	1.00
2-17	40716	CRIP	43587	2-17	Des Moines, Ia.	1.00
2-17	94247	CRIP	46382	2-17	Massillon, Ohio.	1.00
2-18	94270	NC	84367	2-17	Laurys, Pa.	1.00
2-18	40971	B&O	266165	2-17	Des Moines, Ia.	1.00
2-18	40970	CRIP	I42778	2-17	"	1.00
2-18	40969	CRIP	I41533	2-17	"	1.00
						$41.-

Simonds-Shields-Lonsdale Grain Company February 1936. 43-44

WAYBILL Date	WAYBILL Number	CAR Initial	CAR Number	Date Coopered	Destination	Coopering Charges
2-20	94375	CRIP	I41905	2-19	Hillsdale, Mich.	$1.00
2-20	94377	CRIP	I44027	2-19	"	I.00
2-20	94376	CRIP	I40909	2-19	"	I.00
2-20	94375	CRIP	I40757	2-19	"	I.00
2-20	94374	CRIP	I41607	2-19	"	I.00
2-20	94373	CRIP	I41976	2-19	"	I.00
2-20	94372	CRIP	I40759	2-20	"	I.00
2-24	42173	CRIP	I40333	2-24	Shawnee, Okla.	I.00
2-24	94490	CRIP	41713	2-24	Monroe, Mich.	I.00
2-25	42387	CRIP	I56759	2-25	Yukon, Okla.	I.00
2-26	42698	CRIP	I40614	2-26	Shawnee, Okla.	I.00
2-27	94640	CRIP	I40130	2-26	Hillsdale, Mich.	I.00
2-27	94641	CRIP	I40049	2-26	"	I.00
2-27	94642	CRIP	I42213	2-26	"	I.00
2-27	94643	CRIP	I41001	2-26	"	I.00
2-27	94644	CRIP	I42235	2-26	"	I.00
2-27	94645	CRIP	I41366	2-26	"	I.00
2-27	94646	CRIP	I40573	2-26	"	I.00
2-28	88992	CRIP	I40069	2-26	Fostoria, Ohio.	I.00
2-28	88990	CRIP	44523	2-26	"	I.00
2-28	88991	CRIP	I40486	2-26	"	I.00
2-28	88989	CRIP	I33282	2-26	"	I.00
3-3	94881	CRIP	I40781	2-26	Hillsdale, Mich.	I.00
2-29	43538	CRIP	I40147	2-28	Des Moines, Ia.	I.00
2-28	88993	CRIP	I58679	2-28	Fostoria, Ohio.	I.00
2-28	88994	CRIP	I40156	2-28	"	I.00
2-28	94727	CMStPAP	712470	2-28	Indianapolis, Ind.	I.00
2-28	94726	CP	235055	2-28	"	I.00
2-28	94725	CRIP	I42941	2-28	"	I.00
2-28	43370	CRIP	42578	2-28	Shawnee, Okla.	I.00
2-29	43537	CRIP	I42514	2-28	Des Moines, Ia.	I.00
~~2-28~~	~~90486~~	~~CRIP~~	~~I48861~~	~~2-28~~	~~Midland Mill~~	~~$.85~~ #
~~2-28~~	~~90486~~	~~MKT~~	~~95077~~	~~2-28~~	~~"~~	~~$.85~~ #
~~2-28~~	~~90486~~	~~D&O~~	~~206736~~	~~2-28~~	~~"~~	~~$.85~~ #
~~2-28~~	~~90486~~	~~ATSF~~	~~124077~~	~~2-28~~	~~"~~	~~$.85~~ #
~~2-28~~	~~90486~~	~~ATSF~~	~~185578~~	~~2-28~~	~~"~~	~~$.85~~ #
3-6	45267	UP	I38061	2-28	Yukon, Okla.	I.00

32.00

Cross Town Switch Move.

[fol. 45] Plaintiffs further state that all of said cars, so loaded with said grain or grain products as aforesaid, moved in interstate commerce.

Plaintiffs further state that they thereafter demanded from the defendant the sum of one dollar ($1.00) per car, or the total sum of six hundred twenty-four dollars ($624.00) for the said installation of grain doors on the said above-numbered cars, as provided by the said applicable tariff; that the defendant at all times failed and refused, and still fails and refuses, to pay the same.

Wherefore, plaintiffs pray judgment against the defendant in the said sum of six hundred twenty-four dollars ($624.00) together with the costs of this action.

Henry S. Conrad, L. E. Durham, Hale Houts, I. M. Lee, Attorneys for Plaintiffs.

IN UNITED STATES DISTRICT COURT

WAIVER OF ISSUANCE OF SUMMONS BY DEFENDANT, AND ENTRY OF APPEARANCE—Filed May 5, 1936

Now comes Simonds-Shields-Lonsdale Grain Company, defendant in the above entitled cause, and waives issuance of summons and hereby enters its appearance.

Simonds-Shields-Lonsdale Grain Company, by F. A. Theis, President.

IN UNITED STATES DISTRICT COURT

ORDER TRANSFERRING CAUSE TO JUDGE OTIS' DOCKET—Filed April 2, 1937

It is hereby ordered upon agreement of all the parties to the foregoing suits and with the consent of Judge Otis before whom similar causes are pending against the same defendant, that said suits be and are transferred to Judge Otis' docket, this 1st day of April, 1937.

Albert L. Reeves, District Judge.

Approved: M. W. Borders, Jr., Dean Wood.

[fol. 46] IN UNITED STATES DISTRICT COURT

ANSWER—Filed April 13, 1937

Comes now defendant, and for its answer to plaintiff's petition, alleges and states as follows:

Defendant admits that the plaintiff railroad carrier is and was at all times mentioned in plaintiff's petition a corporation duly organized and existing according to law, and engaged as an interstate common carrier by railroad into and through many states. Defendant further admits that the shipments hereinafter referred to were interstate shipments. Defendant further admits that defendant is a corporation, organized and existing according to law.

Defendant admits that this Court has jurisdiction of this suit.

Defendant admits that plaintiff did, on July 1, 1935, attempt to post and publish the tariff as set forth in plaintiff's petition.

Defendant admits that on various dates since the effective date of the said purported tariff, the plaintiff delivered certain cars at the grain elevator of the defendant, designated by the defendant for loading grain and grain products in bulk by the defendant, which said cars after being so loaded, were transported over the lines of the plaintiff, the initial road haul carrier, and connecting lines to destination, and that the loading and unloading points of each of said shipments were not within the same terminal or switching district. Defendant admits that the number of cars so loaded and transported between July 1, 1935 and February 29, 1936, was six hundred twenty-four (624). Defendant admits after the said cars had been placed for loading and prior to the loading thereof, the plaintiff installed the necessary grain doors in each of said cars. Defendant admits that all of said cars so loaded with said grain or grain products moved in interstate commerce.

Defendant denies each and every other allegation contained in plaintiff's petition.

Further answering, defendant alleges and states that it was the duty of the plaintiff to furnish to and for defendant for the carriage of grain and grain products, adequate transportation facilities and suitable cars for such purpose, including the obligation to furnish grain doors and a terminal market such as Kansas City, fully coopered and ready

for loading, without charge to defendant; that the plaintiff had furnished such cars so coopered and ready for loading and such services for a period of many years to the de- [fol. 47] fendant, and that the plaintiff was compensated therefor by the line-haul rate; that the furnishing of the services and facilities covered by the aforesaid purported tariff was a part of the transportation service which plaintiff was under a duty to furnish to the defendant, and for which plaintiff was compensated by its line-haul rate, and for which no charge was or is owing from defendant to plaintiff; that the purported tariff is unreasonable in that it attempts to shift to the defendant, or the shipper, the duties to furnish the grain doors and services in connection therewith contrary to law; that the coopering of cars for grain loading as described in the said purported tariff is a transportation service, and the duty of the plaintiff, and not a part of loading and not the duty of the defendant.

Further answering, defendant states that the terms of the said purported tariff were not complied with by either the plaintiff or the defendant, and that no prior arrangement for the service therein described was ever made between plaintiff and defendant for any specified period of time or for any period of time; that defendant has always and consistently refused to pay the charge attempted to be set up in the said purported tariff or to make any prior arrangement or any arrangement of any kind with the plaintiff for the service; that the defendant has wholly and completely repudiated and denied any liability under the said purported tariff to the plaintiff, and that no arrangement of any kind whatsoever was made with the plaintiff under the said purported tariff.

Wherefore, defendant prays to be dismissed with its costs.

Borders, Borders & Warrick, Attorneys for Defendant.

In United States District Court

Record Entry of Filing of Stipulation of Facts and Waiver of Jury; Cause Submitted, May 6, 1937

This cause coming on regularly for trial, the parties appear by counsel and file Stipulation of Fact and Waiver of Jury. Counsel make opening statement and plaintiff introduces testimony and rests; defendant presents testimony

and rests; arguments are made by counsel, and the Court sets May 10, 1937 as date for submitting findings of fact and conclusions of law.

[fol. 48] IN UNITED STATES DISTRICT COURT

JUDGMENT—Filed May 25, 1937

A jury having been waived by both parties, I hereby find the issues in favor of the defendant and against the plaintiffs and assess the costs of this cause against the plaintiffs.

Dated at Kansas City, Missouri, this 25th day of May, 1937.

Merrill E. Otis, District Judge.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING LEAVE TO FILE MOTION FOR REHEARING—Filed May 25, 1937

On this 25 day of May, 1937.

It Is Ordered that the plaintiffs be and they are hereby granted leave to file their motion for a rehearing in this case for the consideration of the Court.

Merrill E. Otis, District Judge.

IN UNITED STATES DISTRICT COURT

PLAINTIFFS' MOTION FOR REHEARING—Filed May 25, 1937

Come now the plaintiffs in the above entitled cause and respectfully submit to the Court that the Court should grant a rehearing in the above entitled cause from the judgment rendered in favor of the defendant, for the following reasons:

1. The Court in its opinion and judgment overlooked the fact that in law when the defendant by its letter of July 2, 1935, requested the plaintiffs to install the grain doors from then on out, and the plaintiffs did so install the grain doors,

the provision for prior arrangement was in law complied with, regardless of any protestations or agreements or promises of either party to the contrary.

2. The Court in its opinion and judgment overlooked the fact that in law when the Interstate Commerce Commission decided the provisions for prior arrangement were in every case waived where the carrier performed the service for the shipper and the shipper accepted the same that the Commission was deciding an administrative matter as to whether the provision of a tariff could or could not be waived, analagous to the waiving of an undercharge or any part thereof, which was just as conclusive on this Court as the [fol. 49] decision of the Interstate Commerce Commission in this case authorizing the waiver of forty cents on every dollar charged for this service.

3. The Court in its opinion and judgment overlooks the fact that in law the case of Davis vs. Henderson, 266 U. S. 92, does not hold that the provision for prior arrangement cannot be waived in this case: first, for the reason that the Interstate Commerce Commission had not there determined whether the provision of that tariff was waivable or not, in the exercise of its administrative discretion and, second, that had the Supreme Court of the United States held the provision waivable in the Davis vs. Henderson case, the shipper would have received a benefit by way of damages, not received by other shippers who in good faith complied with the tariff involved in that case requiring the giving of a written request for cars; whereas, in this case the effect of holding the provision in the tariff cannot be waived tends to give this defendant something that other shippers complying with this tariff in good faith and paying the dollar charge stipulated in the tariff for the service, did not get.

4. The Court in its opinion and judgment overlooked the fact in law that by its decision in this case in favor of the defendant, it has permitted the defendant to enjoy the benefit of the installation of the grain doors by the plaintiffs without charge, whereas other shippers who in good faith complied with the tariff and received not one whit more service from the plaintiffs will, because of their good faith, be required to bear the charge; resulting in an unjust discrimination in favor of this defendant against shippers in good faith, which is prohibited by the Interstate Com-

merce Act, so that the provision of the tariff for prior arrangements, if construed to have this effect, is totally void in law and does not prevent the accrual of the charge for the service rendered.

Conrad & Durham, Ilus Lee, Chas. M. Miller, Crane and Mersereau, Dean Wood, Attorneys for Plaintiffs.

IN UNITED STATES DISTRICT COURT

ORDER FOR AMENDMENT, NUNC PRO TUNC, OF JUDGMENT ENTRY
FILED MAY 25, 1937—Filed May 28, 1937

It is hereby ordered on the 28 day of May, 1937, upon good cause shown, that the judgment entry heretofore [fol. 50] entered in this cause on May 24, 1937 does not completely state the facts.

That said judgment entry be amended nunc pro tunc to show the facts and that the motion for rehearing heretofore filed by leave of court after such judgment entry be considered as filed to the new judgment entry entered and reading in terms and figures as in the attached copy.

Merrill E. Otis, United States District Judge.

IN UNITED STATES DISTRICT COURT

JUDGMENT ENTRY—Filed May 28, 1937

Now on this 25 day of May, 1937 this cause coming on to be heard, a jury having been waived by written stipulation filed in this cause, and the parties having agreed to submit the cause on an agreed statement of facts duly filed in the cause, and the Court having heard the evidence and the arguments of counsel, and having considered the agreed statement of facts, the cause is submitted to the Court, and, thereupon, the Court finds the issues in favor of the defendant and against the plaintiffs.

Wherefore, It Is Ordered, Adjudged And Decreed that the plaintiffs have and recover nothing from the defendant in this cause and that the costs be assessed against the plaintiffs.

Merrill E. Otis, United States District Judge.

IN UNITED STATES DISTRICT COURT

RECORD ENTRY, JUNE 29, 1937, MOTION FOR A NEW TRIAL SUBMITTED AND TAKEN UNDER ADVISEMENT

This day the parties appear by counsel and the Motion filed herein for a new trial is submitted to the Court and taken under advisement.

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION FOR A NEW TRIAL—Filed July 1, 1937

The motion of plaintiff for a new trial in the above entitled case having been duly considered by the Court and the Court [fol. 51] being fully advised in the premises, is by the Court overruled. It Is So Ordered.

An exception is allowed to plaintiff.

Merrill E. Otis, District Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed Aug. 30, 1937

Now come Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees, Chicago, Rock Island and Pacific Railway Company, plaintiffs in the above entitled cause, by Ilus M. Lee of Conrad & Durham, Charles M. Miller, and Dean Wood of Crane & Mersereau, their attorneys in this cause, and feeling themselves aggrieved by the final judgment of the District Court of the United States for the Western Division of the Western District of Missouri in the above entitled cause, made and entered herein on the 25th day of May, 1937, the said plaintiffs having duly and timely filed a motion for a new trial herein, and said motion for a new trial having been considered and overruled by the court on the 2nd day of July, 1937, do hereby appeal from said final judgment to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons set forth in the assignment of errors, filed herewith, and pray that this appeal be allowed and that citation be issued as pro-

vided by law and that a transcript of the record, proce
ings and documents upon which said judgment was bas
duly authenticated, be sent to the United States Circ
Court of Appeals for the Eighth Circuit, under the statu
and rules of said court in such cases made and provided.

Petitioners further pray that the amount of the e
bond on this appeal may be fixed by the order allowi
appeal.

Frank O. Lowden, James E. Gorman, Joseph
Fleming, Trustees, Chicago, Rock Island and P
cific Railway Company. By I. M. Lee, of Conr
& Durham; Charles M. Miller, Dean Wood
Crane & Mersereau, Their Attorneys.

[fol. 52] In United States District Court

Assignment of Errors—Filed August 30, 1937

Now come Frank O. Lowden, James E. Gorman, and Jo
eph B. Fleming, Trustees, Chicago, Rock Island and Pacif
Railway Company, plaintiffs in the above entitled caus
and file the following Assignment of Errors in the tri
and decision of said District Court in said cause upon whic
they will rely upon their appeal in said cause from the judg
ment and decree made and rendered in said District Cour
in said cause on the 25th day of May, 1937, motion for ne
trial overruled the 2nd day of July, 1937.

The District Court of the United States for the Weste
Division of the Western District of Missouri erred in th
trial and decision of the above entitled cause in the follow
ing particulars, to-wit:

1. The court erred in refusing, plaintiffs excepting, at the
close of all the evidence, to give the conclusion of law re-
quested by plaintiffs, for convenience referred to as Con-
clusion of Law No. 1, reading as follows:

"At the close of all the evidence, a jury having been
waived, the Court declares the law to be that the plaintiff
is entitled to recover on every shipment."

for the reason that the defendant requested the plaintiffs to
install the grain doors as a permanent course of dealing,
and the plaintiffs did comply with the defendant's request

and installed the grain doors; and for the further reason that the defendant accepted the plaintiffs' service of installing the grain doors and continued to accept said service from the time the applicable tariff went into effect throughout the period of suit; thereby for each of these reasons the defendant becoming liable for the charge under the applicable tariff for said service of installation; and for the further reason that under the admitted tariff filed and approved and under the law, plaintiffs were not only entitled to recover but were required to collect. Therefore, the court erred as aforesaid, because the judgment is not supported by the findings of fact, for all of the foregoing reasons, but, on the contrary, the findings of fact, for these reasons, entitle the plaintiffs to the giving of Conclusion of Law No. 1.

2. The court erred in refusing, plaintiffs excepting, at the close of all the evidence, to give the conclusion of law requested by plaintiffs, for convenience referred to as Conclusion of Law No. 2, reading as follows:

"At the close of all the evidence, a jury having been waived, the plaintiff moves the Court to find the issues for [fol. 53] the plaintiff and render judgment in the sum of Three Hundred Seventy-four Dollars Forty Cents ($374.40) in plaintiff's favor."

for the reason that the defendant requested the plaintiffs to install the grain doors as a permanent course of dealing, and the plaintiffs did comply with the defendant's request and installed the grain doors; and for the further reason that the defendant accepted the plaintiffs' service of installing the grain doors and continued to accept said service from the time the applicable tariff went into effect throughout the period of suit: thereby for each of these reasons the defendant becoming liable for the charge under the applicable tariff for said service of installation; and for the further reason that under the admitted tariff filed and approved and under the law, plaintiffs were not only entitled to recover but were required to collect. Therefore, the court erred as aforesaid, because the judgment is not supported by the findings of fact, for all of the foregoing reasons, but, on the contrary, the findings of fact, for these reasons, entitle the plaintiffs to the giving of Conclusion of Law No. 2.

3. The court erred in refusing, plaintiffs excepting, at the close of all the evidence, to give the conclusion of law requested by plaintiffs, for convenience referred to as Conclusion of Law No. 3, reading as follows:

"At the close of all the evidence, a jury having been waived, the Court declares the law to be that the decision of the Interstate Commerce Commission that the provisions in the tariff for a prior arrangement for a specified period of time was waivable by plaintiff is a decision of an administrative matter and is binding on this Court."

4. The court erred in refusing, plaintiffs excepting, at the close of all the evidence, to give the conclusion of law requested by plaintiffs, for convenience referred to as Conclusion of Law No. 4, reading as follows:

"At the close of all the evidence, a jury having been waived, the Court declares the law to be that the provisions of the tariff for a prior arrangement for a specified period of time was waived as to each car, in that the plaintiff performed the work of installation and the defendant accepted it."

5. The court erred in refusing, plaintiffs excepting, at the close of all the evidence, to give the conclusion of law requested by plaintiffs, for convenience referred to as Conclusion of Law No. 5, reading as follows:

[fol. 54] "At the close of all the evidence, a jury having been waived, the Court declares the law to be that the provision in the tariff for prior arrangement for a specified period of time was a condition precedent only to the rendering of the service of the installation of grain doors by the plaintiff for the defendant."

6. The court erred in refusing, plaintiffs excepting, at the close of all the evidence, to give the conclusion of law requested by plaintiffs, for convenience referred to as Conclusion of Law No. 6, reading as follows:

"At the close of all the evidence, a jury having been waived, the Court declares the law to be that the tariff provision for prior arrangement for a specified period of time did not in law prevent the accrual of the charge upon the performance of the service of installing the grain doors in

each car and the acceptance of such service by the defendant."

7. The court erred in refusing, plaintiffs excepting, at the close of all the evidence, to give the conclusion of law requested by plaintiffs for convenience referred to as Conclusion of Law No. 7, reading as follows:

"At the close of all the evidence, a jury having been waived, the Court declares the law to be that the tariff imposed the primary duty of installing the grain doors on the defendant, and the plaintiff in installing the grain doors in each car, installed the doors as defendant's agent under the tariff."

8. The court erred in refusing, plaintiffs excepting, at the close of all the evidence, to give the conclusion of law requested by plaintiffs, for convenience referred to as Conclusion of Law No. 8, reading as follows:

"At the close of all the evidence, a jury having been waived, the Court declares the law to be that the notice from the defendant to plaintiff that plaintiff permanently was expected to install the grain doors and the continued installation of the grain doors by plaintiff and continued acceptance of the service by defendant constituted a prior arrangement for a specified period of time under the tariff."

9. The court erred in giving, plaintiffs excepting, at the close of all the evidence its declaration of law, reading as follows:

"Upon the facts found we declare the law to be that the plaintiffs cannot recover from the defendant under the tariff sued upon by plaintiffs and that judgment should be for defendant."

[fol. 55] for the reason that the defendant requested the plaintiffs to install the grain doors as a permanent course of dealing, and the plaintiffs did comply with the defendant's request and installed the grain doors; and for the further reason that the defendant accepted the plaintiff's service of installing the grain doors and continued to accept said service from the time the applicable tariff went into effect throughout the period of suit: thereby for each of these reasons the defendant becoming liable for the

charge under the applicable tariff for said service
stallation; and for the further reason that under t
mitted tariff filed and approved and under the law,
tiffs were not only entitled to recover but were requi
collect. Therefore, the court erred as aforesaid, b
the judgment is not supported by the findings of fact,
of the foregoing reasons.

10. The court erred in rendering judgment in favor
defendant and against the plaintiffs, because the jud
is not supported by the findings of fact.

For which errors the plaintiffs, Frank O. Lowden,
E. Gorman, and Joseph B. Fleming, Trustees, Ch
Rock Island and Pacific Railway Company, pray tha
judgment of the District Court of the United States f
Western Division of the Western District of Missouri
dered on the 25th day of May, 1937, motion for new
overruled the 2nd day of July, 1937, be reversed and
judgment be rendered in favor of the plaintiffs an
costs.

I. M. Lee of Conrad & Durham, Charles M. M
Dean Wood of Crane and Mersereau, Atto
for Plaintiffs.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed August 30, 1937

Now on this day the petition of Frank O. Lowden, J
E. Gorman and Joseph B. Fleming, Trustees, Chicago
Island and Pacific Railway Company, praying that th
allowed an appeal to the United States Circuit Court o
peals for the Eighth Circuit, from the judgment made
entered in the above entitled cause on the 25th day of
1937, motion for new trial considered and overruled the
day of July, 1937, having been presented to the court,
hereby

[fol. 56] Ordered that an appeal to the United States
cuit Court of Appeals for the Eighth Circuit from said j
ment be and the same is hereby allowed, and that a c
fied transcript of record, testimony, exhibits, stipulat
proceedings and documents in accordance with praecip

forthwith transmitted to the said Circuit Court of Appeals for the Eighth Circuit.

It Is Further Ordered that the cost bond on appeal be fixed at the sum of two hundred fifty Dollars ($250.00), the same to act as a bond for costs and damages on appeal.

Dated this 30th day of August, 1937.

Merrill E. Otis, District Judge.

Bond on appeal for $250.00, approved and filed August 31, 1937, omitted in printing.

[fol. 57] In United States District Court

Bill of Exceptions—Filed September 14, 1937

Be It Remembered, that on the 6th day of May, 1937, and the days hereinafter mentioned, the above entitled cause came on regularly for hearing, a jury having been waived, at Kansas City, Missouri, before Honorable Merrill E. Otis, Judge of the United States District Court for the Western Division of the Western District of Missouri.

Appearances:

Plaintiffs were represented by their counsel Ilus M. Lee of Conrad & Durham, 901 National Fidelity Life Bldg., Kansas City, Missouri, and by associate counsel Charles M. Miller, 1011 Commerce Bldg., Kansas City, Missouri, and Dean Wood, of Lathrop, Crane, Reynolds, Sawyer & Mersereau, 1900 Fidelity Bldg., Kansas City, Missouri.

Defendant was represented by its counsel Melville W. Borders of Borders, Borders, & Warrick, 1415 Commerce Bldg., Kansas City, Missouri.

Whereupon, the following proceedings were had and entered of record:

Whereupon Opening Statements were made to the Court by Counsel for Plaintiffs and Defendant, respectively.

RECITAL OF WAIVER OF JURY

Mr. Lee: I suppose the record should show the waiv
the jury and that the case is submitted to the Court
have a stipulation to that effect.

PLAINTIFFS' EVIDENCE

Whereupon, the plaintiffs, by their counsel, to s
the issues on their part, offered and introduced the f
[fol. 58] ing evidence, both oral and documentary, in
and figures as follows, to-wit:

(Whereupon said document referred to by counsel,
in the nature of a stipulation, and agreed statement of
was by the Reporter marked as Plaintiffs' Exhibit
identification.)

Mr. Lee: Plaintiffs offer in evidence Exhibit marke
the Reporter Plaintiffs' Exhibit 1, which is a stipulatio
agreed statement of facts.

(Which said document so offered and received in
dence, marked Plaintiffs' Exhibit 1, Stipulation and ag
statement of facts, is in words and figures as follows
wit:)

PLAINTIFFS' EXHIBIT 1

STIPULATION AND AGREED STATEMENT OF FACTS

IN THE DISTRICT COURT OF THE UNITED STATES FOR
WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOU

No. 9481

FRANK O. LOWDEN, JAMES E. GORMAN and JOSEPH B. FL
ING, Trustees, Chicago, Rock Island and Pacific Railw
Company, Plaintiffs,

vs.

SIMONDS-SHIELDS-LONSDALE GRAIN COMPANY, a Corporati
Defendant

It is hereby stipulated and agreed, by and between
parties hereto, that a jury may be waived in the above
titled cause and the same submitted to the court on the f
lowing stipulated facts:

(1) It is stipulated and agreed that the plaintiffs are now, and were at all the times referred to in plaintiffs' petition, the duly and legally appointed trustees of the Chicago, Rock Island and Pacific Railway Company, they having been so appointed by the District Court of United States for the Northern District of Illinois in a certain bankruptcy proceeding therein pending, as alleged in plaintiffs' petition; that now and at all times mentioned and referred to in plaintiffs' petition, the said Chicago, Rock Island and Pacific Railway Company is and was a railroad corporation, organized and existing according to law, and that now and at all of said times the plaintiffs, as the Trustees of said Railway Company, were engaged in interstate commerce and interstate transportation in and through the State of Missouri and many other states.

[fol. 59] (2) It is further stipulated and agreed that now, and at all times mentioned and referred to in plaintiffs' petition, the defendant is and was a corporation, organized and existing according to law, and engaged in the business of shipping by railroad, in carload shipments in bulk, of grain and grain products, from Kansas City, Missouri-Kansas, into and through other states.

(3) It is further stipulated and agreed that plaintiffs duly filed with the Interstate Commerce Commission, and duly posted and published a certain Western Trunk Lines Freight Tariff No. 330, with respect to furnishing and installing grain doors, or lumber for side or end door barricades for carload shipments in bulk, of grain, grain products and other articles, at certain terminal elevator points specified in said Tariff, including Kansas City, Missouri-Kansas, and that the effective date of said Tariff was July 1st, 1935; that attached to this stipulation is a true and correct copy of said Tariff, marked "Exhibit A", the parties hereto agreeing that the same may be offered in evidence and used with the same force and effect as though duly certified by the Interstate Commerce Commission. The particular part of said Tariff, applicable to this case, is designated as Item No. 70, on page 13 of said Tariff.

(4) It is further stipulated and agreed that on July 2, 1935, following the effective date of said Tariff on July 1, 1935, the defendant, along with many other shippers of grain and grain products from terminals in Kansas City, Missouri-Kansas, sent by mail a joint letter to the local

freight agents of all railroads, including the plaintiffs, entering said terminals, to the general effect that the defendant, as a shipper of bulk grain, regardless of anything contained in the Tariff hereinbefore referred to, or any other rule or regulation filed with the Interstate Commerce Commission, or otherwise, and the other said shippers, signing such letter, would expect the plaintiffs and the other railroads to whom said joint letter was addressed, to continue from and after July 1, 1935, as before said date, to furnish and supply the defendant and the other said shippers, upon orders for cars to load and ship bulk grain, such equipment as would be suitable to carry such bulk grain safely, and that if ordinary box cars were furnished and supplied on said orders, the defendant and the other said shippers signing said letter would expect such cars to be fully coopered or prepared with necessary side-door barricades, completely installed and ready for loading, and that the defendant and said other shippers, regardless of the provisions of said Tariff, declined and would continue to decline to [fol. 60] pay plaintiffs any charge demanded for the service of installing, or placing of grain doors or barricades in cars delivered by plaintiffs to the defendant, upon orders of the defendant, for the loading of bulk grain; that the full text of said letter above referred to is as follows:

"The Board of Trade Kansas City, Mo.

Kansas City, Mo., July, 2, 1935.

Messrs: C. B. Cullison, Local Agent, The Alton Railroad Company; J. R. Hitchcock, Local Agent, A. T. & S. F. Railway Co.; R. M. Rhodes, Local Agent, C. B. & Q. Railroad Co.; C. W. Nunn, Local Agent, Chicago, Great Western Railroad Co.; R. G. Larson, Local Agent, C. M. St. P. and P., Railroad Co.; C. P. Varney, Local Agent, C. R. I. & P. Railway Co.; C. W. Nunn, Local Agent, Kansas City Southern Ry. Co.; C. Hosmer, Local Agent, M. K. & T. R. R. Co.; H. E. Johnson, Local Agent, Missouri Pacific Railroad Co.; B. J. Gleason, Local Agent, St. L. & S. F. Ry. Co.; G. M. Christ, Local Agent, Union Pacific Railroad Co.; R. B. Berrey, Jr., Local Agent, Wabash Railway Co.

GENTLEMEN:

The undersigned, being shippers of bulk grain located in Kansas City, Mo.-Kans., hereby notify you, and each of you,

that regardless of anything contained in items Nos. 70 and 75 appearing on page 13 of a certain tariff filed for your account by L. E. Kipp, Agent with the Interstate Commerce Commission under No. I. C. C. A-2579, or any other rule or regulation filed with the Interstate Commerce Commission or otherwise, they expect you to continue from and after July 1, 1935, as before said date, to furnish and supply them upon orders, for cars to load and ship bulk grain such equipment for said purpose as is suitable safely to carry bulk grain.

"Said undersigned parties further notify you that if ordinary box cars are furnished and supplied upon such orders they will expect them to be fully coopered or prepared with necessary side-door barricades completedy installed and ready for loading.

"Said undersigned parties further notify you that regardless of the tariff items, or any other rules or regulations, they decline and will decline to pay any charges whatsoever which may be demanded by you for any work or service involved in making your cars suitable for loading bulk grain, and in particular they decline and will decline to pay any charge for the alleged service of installing or placing [fol. 61] grain doors or barricades in cars tendered by you upon order for loading bulk grain.

"Said undersigned parties further notify you that if upon orders as aforesaid cars are furnished and supplied which are not fully coopered with grain doors or barricades in place or which are not otherwise suitable and properly prepared for loading bulk grain such cars will be accepted under protest, and protest is hereby made against each and every such car furnished or which may be furnished upon such orders.

"And said undersigned parties further notify you that if cars are furnished and supplied, contrary to this notice, which necessitate expenditure by said parties, or any of them, for labor or materials in order to install grain doors or barricades, or otherwise to make such cars suitable and properly prepared for loading bulk grain, then in that and every such event said parties will demand reimbursement in full together with interest for each and every such expenditure.

"Said parties hereby request you to acknowledge receip hereof upon the attached copy by return mail.

Yours truly, Continental Export Company, Davis Noland-Merrill Grain Co., Farmers National Grai Corporation, Lathrop-Marshall Grain Company Moore-Seaver Grain Company, Norris Grain Com pany, Scoulars-Bishop Grain Company, Simonds Shields-Lonsdale Grain Company, Uhlmann Grai Company, Washburn Crosby Company, Wolcott & Lincoln, Inc., by W. R. Scott. Orig. Signed (W. R Scott).

Address acknowledgments to W. R. Scott, 1419 Board of Trade Building, Kansas City, Mo."

[fol. 62] On July 15, 1935, the local agent of plaintiffs, along with the local agents of the various other railroads entering Kansas City, Missouri-Kansas, sent to the defendant and other grain companies in Kansas City, Missouri-Kansas, in reply to the letter quoted next above, the following joint letter:

"Kansas City, Mo., July 15, 1935.

Continental Export Company, Davis-Noland-Merrill Grain Company, Farmers National Grain Corporation, Lathrop-Marshall Grain Company, Moore-Seaver Grain Company, Norris Grain Company, Scoular-Bishop Grain Company, Simonds-Shields-Lonsdale Grain Company, Uhlmann Grain Company, Washburn Crosby Company, Wolcott & Lincoln, Inc., and Mr. W. R. Scott, 1419 Board of Trade Building, Kansas City, Mo.

GENTLEMEN:

In reply to your letter of July 2, 1935, relating to the installation of grain doors and other kindred matters, let me invite your attention to Item 70, as amended, and Item 75-A of the attached copy of WTL Tariff No. 339 (L. E. Kipp's ICC A-2579, H. B. Cummins' ICC 372, J. E. Johanson's ICC 2713, H. G. Toll's ICC 1358) and Supplement No. 1 thereto.

It is believed that upon mature reflection you will agree with us that neither the shipper nor the railroad company can be party to a practice not in conformity with the provisions of the tariff as written.

In connection with your suggestion that you will demand reimbursement for grain doors or lumber installed at your expense, permit us to say that payment of such bills would be contrary to the provisions of the applicable tariff and therefore illegal. Bills of that character therefore cannot be recognized.

Unless therefore you make unqualified arrangements pursuant to the terms of the tariff it will be necessary to provide cars which do not have the grain doors installed a- [fol. 63] though, of course, the carrier will provide grain doors or lumber as contemplated by the tariff.

Will you kindly acknowledge receipt?

Yours truly, C. B. Cullison, Local Agent, The Alton R. R. Co. J. R. Hitchcock, Local Agent, A. T. & S. F. Ry. Co. R. M. Rhodes, Local Agent, C. B. & Q. R. R. Co. C. W. Nunn, Local Agent, Chicago Great Western R. R. R. G. Larson, Local Agent, C. M. St. P. & P. R. R. Co. C. P. Varney, Local Agent, C. R. I. & P. Ry. Co. C. W. Nunn, Local Agent, Kansas City Sou. Ry. Co. C. Hosmer, Local Agent, M.-K.-T. R. R. Co. H. E. Johnson, Local Agent, Missouri Pacific R. R. Co. B. J. Gleason, Local Agent, St. L.-S. F. Ry. Co. G. M. Christ, Local Agent, Union Pacific R. R. Co. R. W. Berry, Jr., Local Agent, Wabash Ry. Co."

(5) It is further stipulated and agreed that between July 1, 1935 and February 29, 1936, plaintiffs, upon the orders of the defendant, placed at the defendant's elevator for loading by defendant with grain in bulk, a total of six hundred twenty-four (624) box cars, and that after said cars were placed for such loading and before they were loaded, plaintiffs, at their own cost and expense, furnished and installed the necessary grain doors in each of said 624 box cars, as alleged in plaintiffs' petition; that monthly during said period, plaintiffs rendered to the defendant bills of [fol. 64] $1.00 for each of said cars in which grain doors were installed by plaintiffs during the month for which such bills were rendered; that on November 22, 1935, the defendant returned to plaintiffs' agent all bills theretofore ren-

dered by plaintiffs to the defendant, with a letter declining to pay said bills, said letter being as follows:

"November 22, 1935.

Mr. H. W. Myers, Manager, Kansas City R. R. Clearing House Ass'n, Kansas City, Missouri.

DEAR MR. MYERS:

We are returning you herewith bills for $1.00 per car charge for alleged service of installing grain doors in cars furnished at the Rock Island and Milwaukee Elevators loaded with bulk grain for transportation over the various lines issuing these bills.

There is no tariff authority for this charge unless it be Item No. 70 of W. T. L. Tariff 330, which item however provides in paragraph (1) that the railroad will act as the shipper's agent and install grain doors at terminal elevator points at a charge of $1.00 per car if prior arrangements for the service are made with the carriers covering specified period of time.

This tariff became effective on July 1st and we know of no change in the practice of furnishing and installing grain doors from that existing prior to July 1st, the carriers continuing to furnish upon orders for cars to transport bulk grain, cars completely equipped with grain doors and ready for use. We have made no arrangement with any carrier under which such carrier was to install the doors as our agent as contemplated by the tariff above referred to.

For this reason will you please advise tariff authority for these charges and if the bills were issued under authority of Item 70 W. T. L. Tariff 330 will you please advise how you arrived at the conclusion this item justifies the charge in the absence of any arrangement as contemplated by paragraph (1)?

Yours very truly, Simonds-Shileds-Lonsdale Grain Co., by A. B. Frederickson."

[fol. 65] That on January 9th, 1936, plaintiffs, through their agent, replied to the letter of the defendant quoted last above as follows:

"I am in receipt of your letter of the 22 day of November, 1935, with which you returned bills rendered against your company covering tariff charges due for the installation of

ain doors in cars furnished for the transportation of bulk ain.

You request to be advised by what tariff authority these lls are presented and as to the arrangement made in con- ction with Paragraph 1 of Item 70 of WTL tariff 330.

As to your first question, you are advised that these bills e rendered under the authority of WTL freight tariff No. 0.

You are further advised that under date of July 2nd, 35, you were a party to a joint letter to the railroads, in hich was contained the following paragraph:

'Said undersigned parties further notify you that if ordi- ry box cars are furnished and supplied upon such orders ey will expect them to be fully coopered or prepared with cessary side door barricades completely installed and ady for loading.'

The Railroad Company in good faith accepted this notice at all cars ordered for grain loading were to be fully oopered as a prior arrangement made with the railroads, nd, accepting such prior arrangement, the cars were oopered for your account and as your agent, and were ccepted and used by you as such.

This state of facts renders the tariff charges applicable. I present herewith bills for the services rendered; and equest is hereby made that your check to cover be trans- itted without delay.

Yours truly, H. W. Myers, Manager."

That thereafter and on January 15, 1936, the defendant eplied to plaintiffs' letter quoted last above as follows:

fol. 66] "January 15, 1936.

Ir. H. W. Myers, Manager, Kansas City Railroad Clear- ing House Association, Kansas City, Missouri.

)EAR SIR:

Replying to your letter of January 9th, file 7968, and eturning various bills for charges covering alleged service f installing grain doors in cars loaded with grain at the filwaukee and Rock Island Elevators.

We have noted all you have said and cannot agree with ou that Mr. Scott's letter of July 2nd, under our signature ould be construed as making a prior arrangement with the arriers for this service.

As we stated in our letter of November 22nd, we have not made any arrangement with any carrier to perform this service in accord with the provisions of Item 70 W. T. L. tariff 330, which states this arrangement is to be made with the carriers and to cover a specified period of time.

For this reason we decline to pay the bills and return them with this letter.

Yours very truly, Simonds-Shields-Lonsdale Grain Co., A. B. Frederickson."

On March 30th, 1936, the local agent of plaintiffs, along with the local agents of the various other railroads entering Kansas City, Missouri-Kansas, sent to the defendant and other grain companies in Kansas City, Missouri-Kansas, in reply to the letter quoted next above, the following joint letter:

"Kansas City, Missouri,
March 30, 1936.

J. C. Brackett Grain Co., Bruce Bros. Grain Co., Checkerboard Elevator Co., B. C. Christopher & Co., Clay-Leahy Grain Co., Continental Export Co., Davis-Hunt Grain Co. [fol. 67] Davis Noland Merrill Grain Co., Ernst-Davis Commission Co., Farmer's National Grain Corp., Fuller Grain Co., Goffe & Carkener, Inc., Hart Bartlett Sturtevant Grain Co., Ismert Hincke Milling Co., Kansas Elevator Co., Kansas Flour Mills Corp., Larabee Flour Mills Co., Lathrop Marshall Grain Co., Mensendieck Grain Co., Meservey-O'Sullivan Grain Co., Mid-Continental Grain Co., Midland Flour Milling Co., Moore-Seaver Grain Co., Morrison-Gregg-Mitchell Grain Co., Norris Grain Co., Ragan Grain Co., J. E. Rahm Grain Co., Ralston Purina Co., Robinson Elevator Co., Rocky Mountain Grain & Commission Co., Rodney Milling Co., Root Grain Co., Russell Grain Co., Scoular-Bishop Grain Co., Shannon Grain Co., Simonds-Shields-Lonsdale Grain Co., E. R. Stripp Co., E. H. Sullivan Grain Co., Uhlmann Grain Co., Vanderslice-Lynds Co., Watkins Grain Co., Wilser Grain Co., Wolcott & Lincoln, Inc., Cargill Grain Co., Staley Milling Co., United Mills Co., Inc., Paniplus Co., Corn Products Refining Co., Mr. W. R. Scott, Kansas City, Missouri.

GENTLEMEN:

Western Trunk Lines Tariff No. 330-A (Kipp's I. C. C. No. A-2653, Peel's I. C. C. No. 2779, Cummins' I. C. C.

No. 388) Provides, subject to qualifications stated in Items 70 and 75 thereof, that in connection with carload shipments [fol. 68] in bulk (subject to that tariff) of grain, grain products and other articles taking same rates, the necessary grain doors, or lumber in lieu thereof, shall be installed by the shipper (or his agent) and at his expense.

Such installation contemplates the usual accessorial service in preparation of cars, such as inspection, a limited amount of cleaning and minor and inexpensive repairs required to prevent loss of grain by leakage.

By Item 70 of the tariff, relative to shipments for road haul movement, it is provided that at the terminal elevator points specified in the item, the railroad agent 'will act as shipper's Agent and install grain doors at a charge of $1.00 per car; prior agreements for the service to be made with the carriers and to cover a specified period of time'.

By Item 75, relative to shipments in cross-town movement, i. e., from a loading point to an unloading point within the same terminal or switching district, it is provided that the shipper shall have three (3) options, if he so elects:

1. The carrier will furnish the grain doors or lumber and install the material in all of the cars of the shipper and reclaim and recondition such material and return it to owner carrier at a charge of $2.25 per car against the shipper;

or

2. The shipper may furnish his own material and install at his expense in all cars shipped by him, provided such material and method of installation shall adequately safeguard contents of car, in which event the carrier will make no charge for the material so furnished and installed;

or

3. The shipper may obtain from the carrier the necessary material at a rental charge of 15c per standard grain door per trip, or lumber in lieu of grain doors at a charge of 2½c per foot, board measure, per trip, the material to be reclaimed for the owning carrier.

In order that the tariff regulations may be strictly complied with, you will advise whether you elect to have carriers furnish cars with grain doors or lumber installed, or whether you elect to install grain doors or lumber for your account.

In the event you wish carrier to perform the installation service the period of time this arrangement shall be in force shall be specified.

[fol. 69] If you decline to enter into an arrangement, as provided by the tariff, or if you elect to install the grain doors or lumber for your own account, the carrier will furnish cars inspected and O. K.'d for grain loading, but without grain doors or lumber installed.

Yours truly, C. B. Cullison, Local Agent, The Alton R. R. Co. J. R. Hitchcock, Local Agent, A. T. & S. F. Ry. Co. R. M. Rhodes, Local Agent, C. B. & Q. R. R. Co. C. W. Nunn, Local Agent, Chicago Great Western R. R. Co. R. G. Larson, Local Agent, C. M. St. P. & P. R. R. Co. C. P. Varney, Local Agent, C. R. I. & P. Ry. Co. C. W. Nunn, Local Agent, Kansas City Sou. Ry. Co. C. Hosmer, Local Agent, M.-K.-T. R. R. Co. H. E. Johnson, Local Agent, Missouri Pacific R. R. Co. O. W. Miller, Local Agent, St. L.-S. F. Ry. Co. G. M. Christ, Local Agent, Union Pacific R. R. Co. R. W. Berry, Jr., Local Agent, Wabash Ry. Co."

(6) It is further stipulated and agreed that the defendant returned to plaintiffs all bills rendered by plaintiffs to the defendant for the installation of grain doors in said 624 box cars, and wrote letters declining payment of the same and referring to defendant's letters to plaintiffs of November 22, 1935, and January 15, 1936, for defendant's reasons for its refusal to pay said bills.

[fol. 70] (7) It is further stipulated and agreed that each and all of said 624 box cars were loaded by the defendant with grain in bulk after plaintiffs installed the necessary grain doors in each of said cars, and that said 624 carload shipments in bulk, of grain, thereafter moved in due course from defendant's elevator in Kansas City, Missouri-Kansas, in interstate commerce, and that the loading point and unloading point of all said 624 carload shipments in bulk of grain, were not within the same terminal or switching district.

(8) It is further stipulated and agreed that plaintiffs have repeatedly demanded of the defendant payment for the installation of the said necessary grain doors in said 624 box cars, and each of them, and that the defendant has

ll times refused, and still refuses, to pay for said service.
9) It is further stipulated and agreed that the parties
erve the right to offer, upon the trial of the case, subject
ll proper and legal objections, any testimony, either oral
documentary, not inconsistent with the above and fore-
ng stipulated facts.

)ated at Kansas City, Missouri, May 3rd, 1937.

L. E. Durham, Hale Houts, I. M. Lee, Charles N. Miller, Cyrus Crane, Geo. J. Mersereau, Dean Wood, Attorneys for Plaintiffs. Borders, Borders & Warrick, Attorneys for Defendant.

(Here follows one photolithograph, side folio 71)

EXHIBIT "A"
TO STIPULATION

FREIGHT TARIFF No. 220.

RULES AND REGULATIONS—Continued.

Item No.	SUBJECT	
70	Furnishing and Installing Grain Doors or Lumber for Side and End Door Barricades	(1) Grain Doors or Lumber for necessary side door barricades (also for necessary end door barricades, if car is equipped with end doors requiring such protection) for carload shipments in bulk, of grain, grain products, seeds and other articles taking same rates, as specified in Lists Nos. 1, 2, 3, 4, 5, 6, Items Nos. 200 to 270, inclusive, will be furnished at loading stations without charge, by the initial road-haul carrier. (See Note 1). The grain doors or lumber so furnished shall be installed by the shipper (or his agent) and at his expense. The railroad will act as shipper's agent and install grain doors at terminal elevator points specified below, at a charge of one dollar ($1.00) per car; prior arrangements for the service to be made with the carriers and to cover a specified period of time: Amarillo, Tex.; Atchison, Kan.; Cedar Rapids, Iowa; Chicago, Ill.; Chicago Switching District, as defined in Agent R. A. Sperry's 20-T, I. C. C. No. A-242; Clinton, Iowa; Council Bluffs, Iowa; Dallas, Tex.; Davenport, Iowa; Denver, Colo.; Des Moines, Iowa; Duluth, Minn.; East St. Louis, Ill.; Enid, Okla.; Ft. Worth, Tex.; Galveston, Tex.; Houston, Tex.; Hutchinson, Kan.; Kansas City, Mo.-Kan.; Leavenworth, Kan.; Lincoln, Neb.; Little Rock, Ark.; Memphis, Tenn.; Milwaukee, Wis.; Minneapolis, Minn.; Minnesota Transfer, Minn.; Oklahoma City, Okla.; Omaha, Neb.; Pekin, Ill.; Peoria, Ill.; St. Joseph, Mo.; St. Louis, Mo.; St. Paul, Minn.; Salina, Kan.; Sioux City, Iowa; Springfield, Ill.; Superior, Wis.; Topeka, Kan.; Wellington, Kan.; Wichita, Kan. (2) When the consignee (or his agent), where cars are unloaded, appropriates or destroys the grain doors or lumber used for side and/or end door barricades, a charge of $1.00 per grain door (or $5.00 per side or end doorway of a car for lumber used in lieu of grain doors) will be made. The amount so collected will accrue to the line-haul carrier or carriers. (3) Material furnished, used under these rules, will be transported with the shipment without charge. If track scale weights are used on carloads of Grain, Flaxseed and other articles provided in this tariff, in bulk, or Grain Products in bulk, in which grain doors or boards are used for side door or end door barricades, the weight of such grain doors or boards will be treated as part of the tare weight of the car. If the actual weight of the grain doors or boards is not ascertained an estimated weight of 60 pounds per grain door, or 2½ pounds per board foot for loose boards, will be used. **Note 1.**—These rules do not apply when loading point and unloading point of shipment are within the same terminal or switching district. (See Item 75.) **Note 2.**—The term "in bulk" used in this rule, means carload shipments of Grain, Grain Products or Flaxseed, which are loose or in mass and not in packages.

Exhibit "A," incorporated in and a part of Stipulation

[fols. 72-73] (Whereupon document presented by counsel for plaintiffs was by the Reporter marked Plaintiffs' Exhibit 2 for identification, being copy of Report of Interstate Commerce Commission.)

Mr. Lee: Plaintiffs next offer in evidence Exhibit 2, which is a copy of the Report of the Interstate Commerce Commission in case entitled Board of Trade, City of Chicago, et al., vs. Abilene & Southern Railway, et al., No. 27284, and two other consolidated cases.

Mr. Borders: I agree that the certificate by the Interstate Commerce Commission be waived. But I object to its introduction as irrelevant, incompetent and immaterial.

The Court: Overruled.

(Which said document so offered and received in evidence, marked Plaintiffs' Exhibit 2, copy of Report of Interstate Commerce Commission, is in words and figures as will be set out in the published reports of the Commission in volume 220 at page 753; material parts of the mimeographed copy of that report introduced in evidence at the trial, are set out here, because volume 220 I. C. C. has not been published yet, and the date of its publication is uncertain.)

PLAINTIFFS' EXHIBIT 2

Interstate Commerce Commission

No. 27284 [1]

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

ABILENE & SOUTHERN RAILWAY COMPANY et al.

Submitted January 14, 1937

Decided April 12, 1937

Upon consideration of the rules, charges, regulations, and practices relating to the furnishing and installation of grain

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[1] This report also embraces No. 27286, Minneapolis Traffic Association, et al. v. Chicago & North Western Railway Company (Charles P. Megan, Trustee) et al., and No. 27290, Amarillo Grain Exchange, Incorporated v. The Chicago, Rock Island & Gulf Railway Company (Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees) et al.

doors, or lumber, for the protection of interstate carloa shipments of grain, grain products, or seed, in bulk, as pul lished on July 1, 1935, by the western lines for applicatio at certain terminal elevator points in western trunk-line an southwestern territories and the border points name Found:

[fol. 74] 1. It is not unreasonable to require that shipper shall, at their own expense, install grain doors furnishe by the carriers.

2. Where, at shipper's request, grain doors are installe by the carrier it is entitled to a reasonable charge for th service rendered.

3. Where the shipper elects to install grain doors fo bulk-grain loading at terminal elevator points, the door shall be placed by defendants either in the cars to be set fo loading or in stock piles adjacent and convenient to th locations at which the grain is to be loaded into the cars.

4. That the prescription of adequate rules in defendants schedules which will act as a deterrent against wanton de struction of their property is reasonable and proper.

5. That the clause in the existing schedules requiring th shipper to make prior arrangements for the service where he desires the carrier to install grain doors for bulk-grain loading is not unlawful, but the requirement may always be waived.

6. That the charge published by defendants for installing grain doors for bulk-grain loading, where the installation is performed by them, was, is, and for the future will be un- reasonable. Reasonable charge prescribed and reparation awarded.

* * * * * * *

Report of the Commission

MILLER, Chairman:

Exceptions to the report proposed by the examiner were filed by the parties, replies made, and the proceedings were

orally argued. Our conclusions differ in certain respects from those recommended by the examiner.

These three complaints, which were filed on January 13, 23, and 27, 1936, respectively, involve substantially the same issues, were heard on a consolidated record, and will be disposed of in one report. The respective complaints were filed by the Board of Trade of the City of Chicago, the Minneapolis Traffic Association, and the Amarillo Grain Exchange, Incorporated, on behalf of their members. Collectively, complainants allege that the rules, charges, regulations, and practices relating to the furnishing and installing of grain doors, or lumber in lieu thereof, for the protection of interstate carload shipments of grain, grain prod-
[fol. 75] ucts, or seed, in bulk, as published by the western carriers for application at terminal elevator points in western trunk-line and southwestern territories, but including Milwaukee, Wis., Chicago, East St. Louis, Peoria, Pekin, and Springfield, Ill., St. Louis, Mo., and Memphis, Tenn., are unreasonable and unlawful in violation of sections 1 and 6 of the Interstate Commerce Act. We are asked to determine and prescribe reasonable rules, charges, regulations, and practices for the future, and to award reparation. Upon the question of reparation, however, the parties stipulated on the record that all proof of damage may be deferred until the major issues involved have been determined. • • •

By schedules which became effective July 1, 1935, the western carriers revised the rules with respect to grain doors or lumber for necessary side and end door barricades for interstate shipments of grain, grain products, seeds and other articles taking same rates, in bulk, in carloads. Concisely stated, the portions of the item under attack are as follows:

1. The initial road-haul carrier will furnish the grain doors or lumber necessary as door barricades in connection with shipments of grain, grain products, seeds, and other articles taking same rates, in bulk, in carloads.

2. The grain doors or lumber so furnished shall be installed by the shipper or his agent and at his expense, but the railroad will act as shipper's agent and perform the instal-

lation service at the terminal elevator points specified [2] at a [fol. 76] charge of $1 per car where prior arrangements for the service are made with the carrier covering a specified period of time.

* * * * * * *

Other portions of the item, which provide that the grain doors or lumber used under the rule will be transported with the shipment without charge and that the rules and charges will not apply when loading and unloading points of shipment are within the same terminal or switching district, are not assailed. When the schedules publishing these rules were filed certain of the complainants in these proceedings sought unsuccessfully to have them suspended.

The grain doors which are furnished shippers of bulk grain without charge are of uniform standard design as approved by the Association of American Railroads. The approved grain door, which is designed to span the doorways

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[2]Amarillo,	Tex.	Little Rock	Ark.
Atchison,	Kans.	Memphis,	Tenn.
Burlington,	Iowa	Milwaukee,	Wis.
Cedar Rapids,	Iowa	Minneapolis,	Minn.
Chicago, (Ill.) switching district*		Minnesota Transfer,	Minn.
		Nebraska City,	Nebr.
Clinton,	Iowa	Oklahoma City,	Okla.
Council Bluffs,	Iowa	Omaha,	Nebr.
Dallas,	Tex.	Pekin,	Ill.
Davenport,	Iowa	Peoria,	Ill.
Denver,	Colo.	St. Joseph,	Mo.
Des Moines,	Iowa	St. Louis,	Mo.
Duluth,	Minn.	St. Paul,	Minn.
East St. Louis,	Ill.	Salina,	Kans.
Enid,	Okla.	Sioux City,	Iowa
Fort Worth,	Tex.	Springfield,	Ill.
Galveston,	Tex.	Superior,	Wis.
Houston,	Tex.	Superior East End,	Wis.
Hutchinson,	Kans.	Texas City,	Tex.
Itasca,	Wis.	Topeka,	Kans.
Kansas City,	Mo.-Kans.	Wellington,	Kans.
Leavenworth,	Kans.	Wichita,	Kans.
Lincoln,	Nebr.		

* As defined in Agent R. A. Sperry's tariff, I. C. C. A-242.

of standard box cars, is approximately 7 feet long, 20 inches wide, made of two courses of 1-inch lumber, cleated, and all boards are clinch-nailed together. Each door contains approximately 23-1/3 feet of lumber and weighs about 60 pounds, although the record instances weights as low as 45 and as high as 70 pounds. They are susceptible *of* handling to and from cars by one man. These grain doors are used in barricading side and end doorways of cars for the loading of bulk grain so as to prevent sifting of the grain from the car while in transit. Hinges are not used in attaching grain doors to cars, and the doors do not form a permanent part of the car. The method of installing grain doors is well understood, but in addition the Association of American Railroads issues from time to time, in pamphlet form, recommendations for inspecting, preparing and coopering cars, as well as instructions for releasing grain doors when the bulk grain is unloaded. These recommendations specifically state that in no circumstance should spikes be used in installing grain doors.

In equipping cars with grain doors it is usual to place folded or twisted paper on the doorway where the bottom grain door will rest and on the inside of the car door posts to which the grain doors are nailed. This paper is so fastened to the floor, sides of the car, and the grain doors as to prevent grain from sifting around the edges of grain doors, 6-penny nails being used to hold the paper in place. It requires about 20 yards of paper to prepare the doors of an ordinary box car for loading. In nailing the grain doors in place four nails, from 8 to 12 penny, are driven through the doors—two nails at each end—into the door posts. It is also considered good practice to install one grain door [fol. 77] behind the first and second grain door, and this reinforcement door is fastened to the other grain doors by the use of two nails. From three to five grain doors, according to capacity of the car, are used to barricade each side doorway of the car. For ordinary box cars an average of ten grain doors is used. When automobile or furniture cars with wide doorways are furnished a greater number of grain doors is necessary. After the grain is loaded in the car, which is ordinarily done by inserting the elevator grain spout in the car over the top grain door on the loading side, it is usual to nail in an additional board on that side of the car over the top of the top grain door, and this board is about 7 feet long and from 10 to 12 inches wide, being called a half

grain door. When this operation is completed the outer pe
manent slide doors of the car are closed and sealed, the e
is hammer-tested to show whether grain will sift from t
car, and the shipment is ready to move. Naturally there a
wide deviations in actual practice, but the above is sufficie
to show the construction of grain doors, their purpose, a
the method in which cars are provided therewith.

Prior to the establishment of the rules assailed, on Ju
1, 1935, it had long been the practice of defendants to furni
grain doors and to prepare cars for bulk-grain loading wit
out cost to the shipper at the terminal elevator points list
in footnote 3, or at most of those points, but, although d
fendants likewise furnished grain doors at country loadi
points, the installation at the latter points was, and still i
done by the shipper and at his expense. In Farmers' C
operative Assn. vs. Chicago, B. & Q. R. Co., 34 I. C. C. 60,
considered a petition filed in behalf of grain shippers
country stations. In that report we pointed out that b
cause of inability to secure a satisfactory permanent grai
door the practice of defendants for more than a quarter
a century had been to furnish grain shippers at country st
tions with "sectional doors" or boards, which could
nailed to the car door posts, and we further stated that ev
since grain has been shipped in bulk the shippers have bee
required to place the grain doors. We there expressed th
opinion that such a requirement is not unreasonable, as th
placing of the grain doors is an incident of loading and pro
erly should be performed by the shipper.

The railroad specification as to the character of car sui
able for bulk-grain loading is that it should have a goo
roof and good siding, and that the floor should be reasonabl
[fol. 78] clean, requiring only a small amount of sweepin
Ordinary box cars and automobile or furniture cars, if i
good repair, would come within the specification. But com
plainants contend that it is the duty of the carriers unde
the law to furnish cars suitable to transport in safety traffi
which they hold themselves out to carry, and that cars ar
not suitable to transport safely grain or other freight in bul
unless adequate protection is furnished against leakage
the side and end doors of box cars, and also unless this pro
tection in the form of grain doors are installed and in posi
tion when the cars are set for loading. On the other hand
defendants take the position that when the installation
grain doors is performed by the carrier it is a service in th

nature of a concession to the shipper and not a service which, in the absence of a tariff provision, the carrier would be required to perform. In support of this position defendants point out that it is a recognized principle of law that the duty of loading and of unloading carload shipments rests upon the shipper or consignee, and they also refer to rules 27 and 30 of the Consolidated Freight Classification,[4] which, among other things, provide that the lading in closed cars must be so loaded as to prevent contact with car doors, and that temporary doors required to protect or make carload freight secure for shipment must be furnished and installed by shipper at his expense.

In further support of complainants' contention that defendants should install the grain doors at terminal points without cost to the shipper it is urged that the greatest efficiency results from the carriers' grain-door agency, or their contractors, doing the work inasmuch as such practice not only insures a uniform method, proper inspection of the cars at a minimum expense, and minimizes loss of grain from cars due to faulty installation, but also tends to reduce the unit cost of reclaiming grain doors. The reclaiming is done by the grain-door agency and is exclusively for the benefit of the carriers.

[fol. 79] At the present time the work of installing and of reclaiming grain doors is performed for the carriers by independent contractors at Kansas City, Mo., Fort Worth and Dallas, Tex., Minneapolis, Minnesota Transfer, St.

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[4] Consolidated Freight Classification. Rule 27 * * * Section 3. Shippers must observe carriers' rules regulating safe loading of freight and protection of equipment. Freight in closed cars must be so loaded as to prevent any contact with car doors during transit, and weight of lading must be approximately the same on each side of car.

Rule 30, Section 1. (a) Temporary blocking, flooring, or lining, racks, standards, strips, stakes, or similar bracing, dunnage, or supports, not constituting a part of the car, when required to protect and make carload freight secure for shipment, must be furnished and installed by shipper and at his expense. (b) Bulkheads, partitions, temporary doors or door protection, when required to protect or make carload freight secure for shipment, must be furnished and installed by shipper and at his expense. * * *

Paul, and Duluth, Minn., and Superior, Wis. At the remaining terminal elevator points these services are performed by the carrier-maintained grain-door agency of the Western Weighing & Inspection Bureau, hereinafter called W. W. & I. B. Complainants agree that this method of preparing cars for bulk-grain loading is satisfactory to all, and believe that this is due to the circumstance that the men employed for the purpose are experts in their line. To understand fully complainants' contention as above outlined, the work performed in reclaiming grain doors will be explained.

Upon delivery of an inbound car of bulk grain to an elevator at one of these terminal points the car is placed for unloading at the grain pit within the elevator, and the grain doors on the near or unloading side of the car are forced back into the car and the grain removed, usually by some mechanical means. Thereafter the car is swept to remove all of the grain, and the grain doors which were removed are placed back in the car. When these operations are completed the car is moved outside the elevator and the men employed by the grain-door agency proceed to take down the grain doors or lumber from the off side of the car, as well as from the end doors if the car is so constructed. These men then unload the grain doors and lumber onto ground adjacent and usually belonging to the elevator, clip all protruding nails from the doors, make such repairs as are found necessary, and place the doors in what are termed reclaim piles. During the reclamation, as well as during the installing operation, the grain-door agency maintains an accounting system whereby the several carriers are credited or debited for doors reclaimed or installed. When the accumulation of doors in the reclaim pile becomes excessive the so-called surplus doors are loaded into freight cars by the grain-door agency for return to the owning line, each door being stenciled or otherwise marked for identification with the name of the owning line. Subsequently the same men distribute the remaining doors from the reclaim piles to so-called stock piles, from which they carry the doors to cars which are set for installation.

In the latter operation the men employed by the grain-door agency first inspect the car to see whether it is fit for bulk-grain loading, sweep the car, make such minor repairs as may be found necessary, carry the necessary grain doors [fol. 80] from the stock piles and put them in the car, fix the

folded or twisted paper in place as previously explained, and nail in the grain doors. The reclaiming work begins when these men begin to take down the grain doors which were not removed when the grain was unloaded from the inbound car, and defendants take the position that the installation work for the outbound movement begins when the doors are taken from the reclaim piles and placed in the so-called stock piles. Complainants, however, contend that the work begins when the grain doors are carried from the so-called stock piles to the car. There is at least one radical modification of the operation just explained which is practiced at certain points. At Chicago, St. Louis, and possibly other terminal elevator points, after the grain is unloaded from the inbound car at the elevator and the car swept clean and before the reclamation work begins, it often happens that the car is immediately set for reloading with outbound bulk grain. Such a car is called a "reload". In such a case it appears that it is merely necessary to repaper and nail up the grain doors on one side of the car, and that this work can be done in from 5 to 8 minutes. The schedules which became effective July 1, 1935, do not differentiate between preparing a car in its entirety and preparing a "reload".

The evidence shows that the number of inbound shipments of bulk grain at these terminal elevator points is far in excess of those outbound. For the year 1935 it is shown that at 12 of these terminal markets 300,481 carloads of inbound bulk grain were received and 180,206 carloads were shipped. It is obvious, therefore, that, based on the number of inbound and outbound cars, the volume of work in reclaiming grain doors from inbound cars is in excess of that performed for outbound cars. The record shows that in the reclaiming work expedition is not required, whereas when a car is prepared for an outbound movement the work must be done immediately. Although the record is replete with evidence concerning the amount of time spent in the latter operation, and which will be covered later in this report, there is but little information concerning the amount of time spent in reclamation.

It is evident from the explanation as to the work performed by the employees of the grain-door agencies that the work of installation dovetails with the work of reclamation. Whether the grain-door agencies prepare cars for the outbound movement of bulk grain under the schedules which became effective July 1, 1935, or that work is done by the

shipper, the carriers must still maintain their grain-door [fol. 81] agencies for the purpose of reclaiming their grain doors from inbound cars. There is considerable merit, therefore, in complainants' contention that the performance of both classes of work by these men will tend to reduce the unit cost of reclaiming the doors. Certain of defendants' witnesses readily admit that this contention is meritorious.

Defendants stress the fact that at terminal elevator points the shipper is not required to install the grain doors. Under the new rules, if the shipper desires, he may avoid the carrier's charge by doing the work himself. But if the shipper desires the carrier will do the work, and the charge stated in the schedules, which defendants deem reasonable, will become applicable. According to defendants, the primary purpose of the item established July 1, 1935, was to simplify their tariffs, remove unjust discrimination, eliminate all wasteful practices such as those criticised by us in our reports in the western grain case, docket No. 17000, part 7, and to recoup some of the loss, amounting to about $6,000,000, estimated by the carriers to result from the findings in that case. They explain that they have considered the initiation of a charge at terminal elevator points for a number of years, but withheld action pending final disposition of the litigation in the western grain case and related cases.

The question as to unjust discrimination between country stations and terminal elevator points was fully discussed and a negative finding made in Farmers' Cooperative Assn. vs. Chicago, B. & Q. R. Co., supra. As to the alleged wasteful practices, complainants contend that nothing said in the western grain case would be construed as a criticism of defendants' practice of installing grain doors at terminal points without charge. Be that as it may, defendants interpret the prescription of the alleged low rates in the western grain case as including only "naked transportation" rates. Complainants are of the opposite view, but, regardless of this, point out that defendants' argument is inconsistent in that under the rules here assailed the carriers would still make the rates go further and include the furnishing of the grain doors without additional cost. Justification for this practice is found in the fact that the doors manufactured by or for the carriers are of uniform size and construction, which tends to facilitate their installation and removal, and the adoption of uniform doors meets the criticism made in Farmers' Cooperative Assn. vs. Chicago, B. & Q. R. Co.,

supra, that unlawful discrimination results from furnishing "sectional doors" at one point and loose boards at another. As to the theory that the rates prescribed in the [fol. 82] western grain case comprehend the installation of grain doors at terminal points by the carrier without cost to the shipper, defendants on brief make the point that, when it is considered that the shippers at terminal points are relatively few compared with the multitude of shippers at hundreds of country stations, it is inconceivable that in the prescription of grain rates in that case we would require the many to pay for a service they do not receive to compensate the carriers for the installation of grain doors for the relatively few shippers at terminal markets.

The reasonableness of requiring shippers to assume the expense of installing the special protection against leakage was upheld as to bulk grain in the Farmers' Cooperative Assn. case, supra; as to bulk salt in Sterling Salt Co. vs. P. R. R. Co., 43 I. C. C. 276; and as to bulk glass sand in Morgan County Sand Producers Asso. vs. B. & O. R. R. Co., 51 I. C. C. 475.

1. We find that, as the installation of grain doors is an incident of loading bulk grain, it is not unreasonable to require that the shipper should at his own expense install the doors furnished by the carriers and made available to him as provided in finding number 3 herein.

2. We further find that when, at the request of the shipper, the carrier installs the grain doors it is entitled to a reasonable charge for the service rendered.

Point Where Grain-Door Installation Begins

It is the position of certain of the complainants that if we find it not unreasonable to require the shipper at terminal elevator points to install the grain doors at his own expense, then he should be called upon only to nail up the doors and should not be expected to inspect the car, carry the doors from stock or reclamation piles and place them in the car, or sweep and repair the car. Under defendants' interpretation, wherever the grain doors are placed by the carrier's grain-door agency after reclamation is the place where the operation begins if the shipper installs the doors, and he will also be expected to perform the same service as the carrier's agency performs if it does the work, i. e., carry the doors from reclamation piles, inspect, sweep and make minor re-

pairs to the car, supply paper and nails, and nail up the grain doors. If the car set for bulk-grain loading contains an excessive amount of debris, or if it is in need of major repair, defendants concede that such a car should be rejected.

[fol. 83] It is the prevailing practice to place a suitable supply of grain doors and lumber for the use of the shipper when loading bulk grain in cars, and, to provide a designated carrier's cars with doors of the same ownership, it has become the further practice to place the doors in piles of individual ownership called stock piles. On the present record defendants concede that if the shipper installs the doors they will have no objection to the use of any available door, and this is interpreted to mean that ownership of cars and grain doors need not be identical.

3. We find that when the shipper elects to install grain doors for bulk-grain loading at terminal elevator points, the doors shall be placed by defendants either in the cars to be set for loading or in stock piles adjacent and convenient to the locations at which the grain is to be loaded into the cars.

* * * * * * *

Alleged Violation of Section 6 of the Act

Complainants also allege a violation of section 6 of the act on the ground that the following provision carried in the new rules is contingent, conditional, indefinite, vague, and uncertain:

The railroad will act as shipper's agent and install grain doors at terminal elevator points * * * at a charge of one dollar ($1.00) per car; prior arrangements for the service to be made with the carriers and to cover a specified period of time.

As complainants interpret the tariff, and as a condition precedent to the application of the charge, "prior arrangements for the service" must be made, and it is their contention that where such prior arrangements have not been made, many instances of this character being testified to on the record, the collection of the charge constituted a plain overcharge which should be refunded, and that where the carriers have billed shippers for the charge but it has not been paid there is no legal authority for its collection.

The clause relative to prior arrangements was obviously incorporated for the carriers' benefit, can be waived, and was waived in those instances in which the carriers acted as shipper's agent and installed the grain doors without prior request. Minneapolis Threshing Machine Co. vs. Minneapolis & St. L. R. Co., 37 I. C. C. 92, 93. In performing an accessorial service such as installing grain doors [fol. 84] it is only prudent for the carriers to seek information as to when and the period of time during which such service will be desired in order that sufficient man power may be made available. Manifestly, avoidance of the charge on the ground that prior arrangements were not made, when as a matter of fact the service was accepted and has been performed, cannot be justified.

5. We find that the charge as legally published in the schedules was applicable, and that the clause relative to "prior arrangements" is not ambiguous or in violation of section 6 of the act, but that the requirement may always be waived.

Allegation of Unreasonableness of Grain-Door-Installation Charge

Should it be found that it is reasonable and proper for defendants to make a charge for installing grain doors, then, in the alternative, complainants allege that the existing charge of $1 per car is unreasonable. In support thereof considerable testimony is given as to the length of time required to install grain doors, in performing the tasks connected therewith, and as to various other cost items.

* * * * * * *

At certain terminal elevator points the shippers have been performing this work since July 1, 1935.

* * * * * * *

Generally, since the new rules went into effect, the shippers at Minneapolis, St. Paul, Duluth, and Superior have employed outside contractors to install grain doors for bulk-grain loading, and the charge therefor is 60 cents per car. The same contractors perform similar work for defendants. Two firms at Omaha have also employed an outside contractor to perform this service, and his charge is 50 cents per car.

* * * * * * *

At points other than those where the work is done f
carriers by contractors it is performed by the grai
agency of the W. W. & I. B. The following table sho
addition to the number of industries shipping grain or
products from the terminal points named, the number
dustries which have been doing their own work since
1, 1935, and the number of industries using the W. W. &
service:

[fol. 85]

	Total number of industries	Industries doing own work	W. W. & doi wo
Amarillo, Tex.	8	5	3
Atchison, Kans.	6	4	2
Cedar Rapids, Iowa	7	7	0
Chicago, Ill.	42	0	42
Clinton, Iowa	2	2	0
Davenport, Iowa	5	2	3
Denver, Colo.	12	12	0
Des Moines, Iowa	6	5	1
Enid, Okla.	11	9	2
Galveston, Tex.	2	2	0
Hutchinson, Kans.	14	14	0
Little Rock, Ark.	12	12	0
Milwaukee, Wis.	21	2	19
Oklahoma City, Okla.	9	9	0
Omaha-Council Bluffs	21	20	1
Peoria, Ill.	12	7	5
Pekin, Ill.	5	3	2
St. Joseph, Mo.	15	14	1
St. Louis, Mo.	16	3	13
Sioux City, Iowa	7	7	0
Springfield, Ill.	4	3	1

. . . . . .

Defendants also point out that there is a large capita
vestment in the supply of grain doors maintained by t
at country and terminal stations on their lines. An exh
of record shows that during the years 1909-1934 defend
Atchison, Topeka & Santa Fe Railway Company purcha
8,490,639 doors at a total cost of $4,665,458.74. The aver
number purchased each year for this 26-year period
326,563, at an average yearly cost of $179,440.72. The a
age cost per door is shown to be 54.9 cents f. o. b. facto

The transportation and distribution expenses of grain doors are said not to be included in these figures, and it does not appear that any attempt has been made to apportion these capital investment figures to country and terminal stations, respectively.

Giving consideration to all of the evidence relative to the length of time consumed in equipping ordinary and "reload" cars with grain doors, to the cost figures, to the relevant factual circumstances instanced of record, and to the conclusions which may be drawn therefrom, we are convinced that complainants have sustained the allegation that the charge of $1 per car is unreasonable.

[fol. 86] * * * We are of the view, however, that the present record is lacking in sufficient competent evidence to justify a different charge on "reloads" than on other cars.

6. We find that in those instances where the railroad acts or has acted as shipper's agent in installing grain doors at the terminal elevator points specified in the schedules here under consideration the charge of $1 per car was, is, and for the future will be unreasonable to the extent that it has exceeded or may exceed 60 cents per car. An order for the future will be entered.

As previously stated, the parties to these proceedings stipulated on the record that all proof of damage may be deferred until the major issues have been determined by us. However, we find that in those instances in which complainants paid or bore the assailed charge they have been respectively damaged thereby in the differences between the charges paid and those which would have accrued at the charge herein found reasonable; that they are respectively entitled to reparation in those amounts, with interest; and that in those instances in which the charge has not been paid by complainants, waiver of collection of the undercharges down to the charge herein found reasonable should be, and it is hereby, authorized. Complainants should comply with rule V of the Rules of Practice, accompanying the statements filed under that rule by affidavits showing whether complainants paid and bore the charges. If defendants object to this form of proof, a further hearing may be requested.

McManamy, Commissioner, dissenting:

Like any other special charge or allowance this question is not free from difficulty and the decision cannot be based

wholly on precedent because with the innumerable c
dities and conditions which have been before us pre
can be cited to support almost any conclusion whi
mind can conceive.

Finding 1 places on the shipper the responsibility
stalling at his own expense grain doors furnished by t
riers and finding 2 authorizes the carriers to make a
for installing grain doors when done at the request of
per. With these I disagree. For a commodity such a
grain which moves in tremendous volume and alway
house car which must be leak proof and weather pr
is my view that the obligation should be absolutely
carriers to furnish suitable cars and this means that
and floor must be grain tight just as much as it mean
the roof must be storm tight. We should, therefore, re
[fol. 87] carriers to furnish suitable cars. Our author
do so is well established. Loomis vs. Lehigh Valley
240 U. S. 43.

If some special preparation is necessary then the
road is of course entitled to reasonable compensatio
the service rendered provided compensation is not al
included in the freight rate. This raises the questio
the existing rates include compensation for installati
grain doors? If they do, then, of course, there is no ju
cation for an additional charge for the service. The
jority finds that defendants are entitled to a special ch
without determining this vital point. The report state
fendants' interpretation of the Western Grain case w
is to the effect that the rates there prescribed do not inc
compensation for grain door installation, and comp
ants interpretation to the contrary, but is silent concer
our interpretation. To my mind the existing rates do
clude compensation for grain door installation. Prio
July 1, 1935, it was the practice of defendants to fur
and install grain doors at the terminal elevator points
considered, or at most of them at least, without spe
charge. The charge assailed was established on that d
While this subject appears to have been given no spe
consideration in our reports in the Western Grain cas
is to be noted that our decision on further hearing ther
205 I. C. C. 301 was rendered on October 22, 1934, and u
a record which had been made during a period of seve
years prior thereto. The rates there prescribed, therefo

must have been made in contemplation of the installation of grain doors without additional charge because that was the practice in effect when the case was heard and decision rendered. Moreover, in Farmers' Cooperative Asso. vs. C., B. & Q. R. Co., 34 I. C. C. 61, decided May 11, 1915, it is indicated that this practice was observed at terminal elevator points as long ago as 1911.

Most of the precedents relied upon by defendants and accepted by the majority as justifying present practices in regard to grain door installations are, in my judgment, not in point. It is true that in Farmers' Cooperative Asso. vs. C. B. & Q. R. Co., supra, it was stated that it was not unreasonable to require shippers of bulk grain to place the grain doors. That statement, however, was in conflict with other statements in the report. For example, it was said:

It is the duty of carriers to furnish cars suitable to transport in safety traffic which they hold themselves out to carry. This duty is not fulfilled when a carrier furnishes a [fol. 88] car, upon reasonable request of a shipper, which requires repairing to prevent leakage of grain in transit.

In Sterling Salt Co. vs. P. R. Co., 43 I. C. C. 276, before finding that the discontinuance of allowances to shippers for inside door protection for shipments of bulk salt was not unreasonable, it was first determined that the cost of this service was not included in the line-haul rate. It was there said:

When a commodity is of such a nature and the carrier furnishes this protection in the form of an inside door, an additional expense is incurred; and this expense is obviously a factor that may properly be considered when the rate is fixed. Where the rate is shown to embrace that factor no additional charge should be collected from the shipper. If, however, the transportation rate does not include compensation for this special expense the shipper should expect to pay an additional charge commensurate with the additional cost to the carrier.

Likewise, in National Lumber Dealers' Asso. vs. A. C. L. R. Co., 14 I. C. C. 154, wherein it was found that regulations requiring shippers to secure and stake lumber were not unreasonable, it was shown that the rates were originally made, and had long been maintained, in contemplation of that requirement.

In Morgan County Sand Producers' Asso. vs. B. & O. R. Co., 51 I. C. C. 475, and Sterling Salt Co. vs. P. R. Co.,

supra, the question was the lawfulness of allowances to shippers for performing services similar to those here considered, which practices we had condemned in Balfour, Guthrie & Co. vs. O. W. R. R. & Nav. Co., 21 I. C. C. 539, because conducive to rebates.

In Slatting Cars for Watermelons, 78 I. C. C. 732, we directed the cancellation of a special charge for the slatting of stock cars used for the interstate transportation of watermelons. This was a section 13 proceeding in which undue preference to Texas intrastate traffic was alleged because of the fact that no similar charge was made on the latter traffic. This was pursuant to an order of the Railroad Commission of Texas. It was shown that this order was issued under a State statute requiring railroads to furnish "suitable cars", and it is here shown that the same requirement is in effect on Texas intrastate grain traffic. In my opinion it is a sound one. Another analogous case is Colorado & Utah Coal Co. vs. D. & S. L. R. Co., 85 I. C. C. 545, wherein it was found that defendants' failure to equip box and stock cars with door boards, when such cars were used for the transportation of coal, was an unreasonable practice.

[fol. 89] In my opinion, the failure of defendants to install grain doors without charge in addition to the line-haul rates should be condemned as an unreasonable practice, in violation of section 1 (6), and as a noncompliance with their duty to furnish adequate car service and to establish and observe reasonable regulations and practices pertaining thereto, in violation of section 1 (11).

The report sets forth contentions of defendants that it is the duty of the shipper to inspect and clean cars furnished for the transportation of bulk grain, and to patch up cars that are not in suitable condition for that purpose, but lets these contentions drop without stating any conclusions or making any findings. Lest there [by] any misunderstanding, I take this occasion to set forth my own view, which is that this is an antiquated conception of railroad service, one that should be discarded voluntarily by the railroads as a matter of good business policy and, if they fail to do so, it is, in my judgment, something calling for further action on our part.

I am unable to agree with certain other findings in the report. It is found that the phrase requiring "prior ar-

rangements" to be made when a shipper desires that grain doors be installed by the railroad is not ambiguous, and that this requirement may be waived at the discretion of the latter. As I have indicated above, it is my view that the installation of grain doors should always be done by the railroad. If that were done there would of course be no necessity for prior arrangements. Manifestly the phrase "prior arrangements" is entirely indefinite and uncertain. We should require defendants to state in their tariffs, with a reasonable decree of certainty, what kind of prior arrangements should be made. The finding that the requirement may be waived at the discretion of defendants because the rule is in their own interest is directly contrary to the ruling of the Supreme Court in Davis vs. Henderson, 266 U. S. 92, wherein the Court held that a tariff rule providing that orders for cars must be in writing could not be waived by a railroad.

The Court said:

The contention is that the rule was waived. It could not be. The transportation service to be performed was that of common carrier under published tariffs. The rule was a part of the tariff.

Within the State of Texas under a statute requiring railroads to furnish "suitable cars" carriers for many years have without charge prepared cars for bulk grain loading and the intrastate schedules specifically provide that this will be done. A similar rule should be established here.

[fol. 90] I am authorized to state that Commissioners Splawn and Caskie join herein.

Commissioners Aitchison and Eastman did not participate in the disposition of these proceedings.

* * * * * * *

The above proceeding being at issue upon complaints and answers on file, and having been duly heard and submitted by the respective parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made part hereof:

It is ordered, That the above-named defendants, according as they perform the services at the respectively desig-

nated points, be, and they are hereby, notified and requi
to cease and desist, on or before July 20, 1937, and th
after to abstain, from publishing, demanding, or collecti
for the installation by them of grain doors in railroad c
placed for loading with grain, grain products, or seed
bulk, at the terminal elevator points desig[illegible]ed in the af
said report, a charge which shall exceed the charge nam
in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according
they perform the services at the respectively designa
points, be, and they are hereby, notified and required
establish, on or before July 20, 1937, upon notice to t
Commission and to the general public by not less than
days' filing and posting in the manner prescribed in secti
6 of the Interstate Commerce Act, and thereafter to ma
tain and apply, for the installation by them of grain do
in railroad cars placed for loading with grain, grain pr
ucts, or seed, in bulk. at the aforesaid terminal eleva
points, a charge which shall not exceed 60 cents per c

And it is further ordered, That this order shall contin
in force and effect until the further order of the Comm
sion.

By the Commission.

W. P. Bartel, Secretary. (Sea

Mr. Lee: Now, I suppose, Mr. Borders, we might agr
that grain doors specifications set out on sheets four a
five obviously may be received in evidence. That giv
[fol. 91] the specifications of grain door sections as y
stated to the Court.

Mr. Borders: You mean description as to size?

Mr. Lee: Yes. These grain door specifications as set o
on sheets four and five of the Interstate Commerce Commi
sion opinion, offered in evidence. (Pages 755-6 of 2
I. C. C.)

Mr. Borders: Merely a description of what the grai
door is.

The Court: Very well.

Mr. Lee: We desire also to offer in evidence the note
the bottom of sheet eight taken from the Consolidate
Freight Specifications, Rule 27, Section 3 of that Rule. an
Section 1 of Rule 30. That is a note in the Interstate Com
merce Commission opinion, and we desire to offer that i
evidence.

The Court: Haven't you offered the whole opinion?

Mr. Lee: We offered it all, but I want specifically to call to the Court's attention that note.

Mr. Borders: I object, of course, for the same reason.

The Court: Note on what page?

Mr. Lee: Page 8. (Pages 757-8 of 220 I. C. C.)

The Court: All right.

Mr. Lee: Now, it is understood, is it, Mr. Borders, that the Item 7 of the Tariff involved in this case was in force throughout the period covered by this controversy, namely, July 1, 1935 to and including February 29, 1936?

Mr. Borders: Yes.

Mr. Lee: And while there have been some supplements and amendments to some parts of this Tariff, the Item involved in this controversy was in no manner changed?

Mr. Borders: Yes, I will agree it is in force, but not valid, it was posted.

The Court: You don't agree it was valid?

Mr. Borders: That is right.

Mr. Lee: Of course, I suppose the answer of defendant is in evidence any way.

The Court: Yes, it certainly is considered.

Mr. Lee: We offer then the Answer of Defendant and call the Court's attention to the fact that the Defendant admits jurisdiction of this Court to hear this controversy.

The Court: Anything further?

[fol. 92] Mr. Borders: As part of your case, Mr. Lee, I had an understanding, although not incorporated in the stipulation as to facts, that there was no answer to the letter of the carriers of March 30, 1936, set out on pages 9 and 10 and 11 of the stipulation, and I think the fact is there was no answer to the letter by the defendant.

Mr. Lee: That is admitted, and at this time called to Your Honor's attention, the fact that that letter was dated and sent after the last shipment involved. The last shipment was the last of February, while the letter is March 30th.

Thereupon, the plaintiffs rested their case.

Defendant's Evidence

Thereupon, the Defendant, to sustain the issues on its part, offered and introduced the following evidence, both

oral and documentary, in words and figures as follows, to-wit:

WALTER R. SCOTT, testified as a witness for the defendant as follows:

Direct examination.

By Mr. Borders:

My name is Walter R. Scott and I reside in Kansas City, Missouri where I am employed by the Board of Trade of Kansas City, Missouri as its Secretary and Transportation Commissioner. I am in charge of the Rate Department and Traffic Department of the Board of Trade, and its relations generally with the carriers in respect of transportation matters; and have occupied that position for seventeen years. As Secretary and Traffic man of the Board of Trade I have had frequent relations with the carriers involved in this proceeding and with their tariffs. For two years immediately preceding my connection with the Board of Trade I was in charge of the Rate Department of the Western Petroleum Refiners Association, which is a voluntary association of the Mid-Continent Petroleum Refiners. Prior to that I was for thirteen years in charge of the Public Service Commission of the state of Kansas, and before that I was chief clerk of the Santa Fe railroad at Topeka. Prior to that I had other positions involving acquaintance with traffic and rate matters. In connection with my duties for the Kansas City Board of Trade I have been and am now familiar with the various grain elevators in Kansas City and in the manner of handling grain in and out of those elevators by the railroad carriers.

The history of the method of transporting grain in bulk in the middle west has been, that ever since transportation by railroad in the territory west of Chicago, grain has been transported almost exclusively in bulk except in the far [fol. 93] western territory where it is largely handled in bags even at this time. But in the general territory in which Kansas City is interested more than ninety-nine per cent of the grain is and has been handled in bulk. The reason for this method is the greater economy which it permits in the handling of grain; both for the transportation companies and the elevator companies. Much larger loads can be obtained by that method of transportation and cars can be loaded and unloaded much more expeditiously. This condition has existed back at least to Civil War times. It is

absolutely necessary that the car for the carriage of grain in bulk be in such a condition that it will not leak. Grain flows very freely, and in this market where wheat is the predominant grain, wheat will sift out through very small apertures, and it is necessary therefore to have a car which is quite grain-tight in order to prevent loss in transit. Losses in transit in my experience are charged to the railway. The type of car ordinarily used for the carriage of grain in bulk is only the ordinary box car or house car, the standard railroad equipment. As such and without any other preparation they are quite unsuitable for handling grain, not even a small quantity can be handled in that manner without special preparation of the car. Because of the stresses set up during transportation the grain moves freely in the body of the car and will leak out around it, around the sliding door and through holes or small cracks in the structure of the car. The car must be inspected first to ascertain whether it is a car which will carry grain safely, and therefore it must be one which would be grain-tight and weather-tight and free from noxious odors and must be clean, that is, it must be free from debris left over by the previous loading. Beside the inspection of the car there must be special preparation made to render it proper to carry bulk grain. If after inspection the car is determined to be suitable for handling bulk grain it is generally necessary to patch the car to some extent; all openings must be covered with wood or with paper. The car must be cleaned, swept out and then these grain doors must be installed at the car openings.

Mr. Borders: Will you mark these, please.

(Whereupon photographs referred to by counsel for defendant were by the reporter marked defendant's exhibits A, B, and C for identification.)

A grain door is simply two courses of one inch lumber nailed together with overall dimensions of seven feet by twenty inches. They are laid one on top of another edgeways and it takes about four doors to cover the car opening, together with one which is used to reinforce the four which are nailed to the door post; some times two are used [fol. 94] for reinforcement. Altogether in an ordinary car approximately ten doors are used, five on each side. I do not mean five planks on each side, for a grain door consists of several planks nailed together and they cover an overall

dimension of twenty inches high and seven feet long. I mean five of these twenty inch widths. Each of these twenty inch widths we call a door; that is the ordinary term for each of them. Some times they are referred to as sectional doors, to make that distinction. They are attached to the car on the inside; they are nailed to the door posts. There is a door post on either side of the ordinary opening in the car and the so-called grain doors are nailed to the two door posts, one on each end of the grain door. The car is not entirely filled with grain, but up to a certain level. There is still room after these doors are attached to insert the spout through which the grain is loaded into the car, and the loading doesn't ordinarily proceed to a point where it is less than twenty-four inches below the roof of the car.

In terminal markets such as Kansas City, it is the practice to use a certain amount of strong paper which is folded and laid in the bottom of the door upon which the first grain door rests; and then other paper is placed between the door posts and these sectional doors to make a pad; and then some of the paper is brought back around behind the grain doors after they are filled up, the purpose being of course to make the opening absolutely grain-tight. About twenty yards of paper on the average is figured to be used in one car. The paper is used to plug up the little holes that might be left even after the grain doors themselves are added. If you take the grain doors and put one against the other, there would be a small opening left through which a fine commodity such as wheat might sift out; it is necessary to cover all these small openings with paper.

Exhibit A which you have handed me is a photograph of the Milwaukee elevator in Kansas City with a string of cars at the coopering, track together with piles of grain doors which are ready for use, for installing in these cars preparatory to loading in the elevator. Exhibit C I have here is a close-up view of the same track, showing piles of grain doors along a string of empty cars ready for nailing up by the workmen. This Exhibit B is a photograph of a box car after the grain doors have been installed ready for loading. These pictures correctly reveal the grain door when on the pile on the ground and when installed ready for loading.

Defendant introduced in evidence defendant's Exhibits A, B, and C, reading in words and figures, as follows:

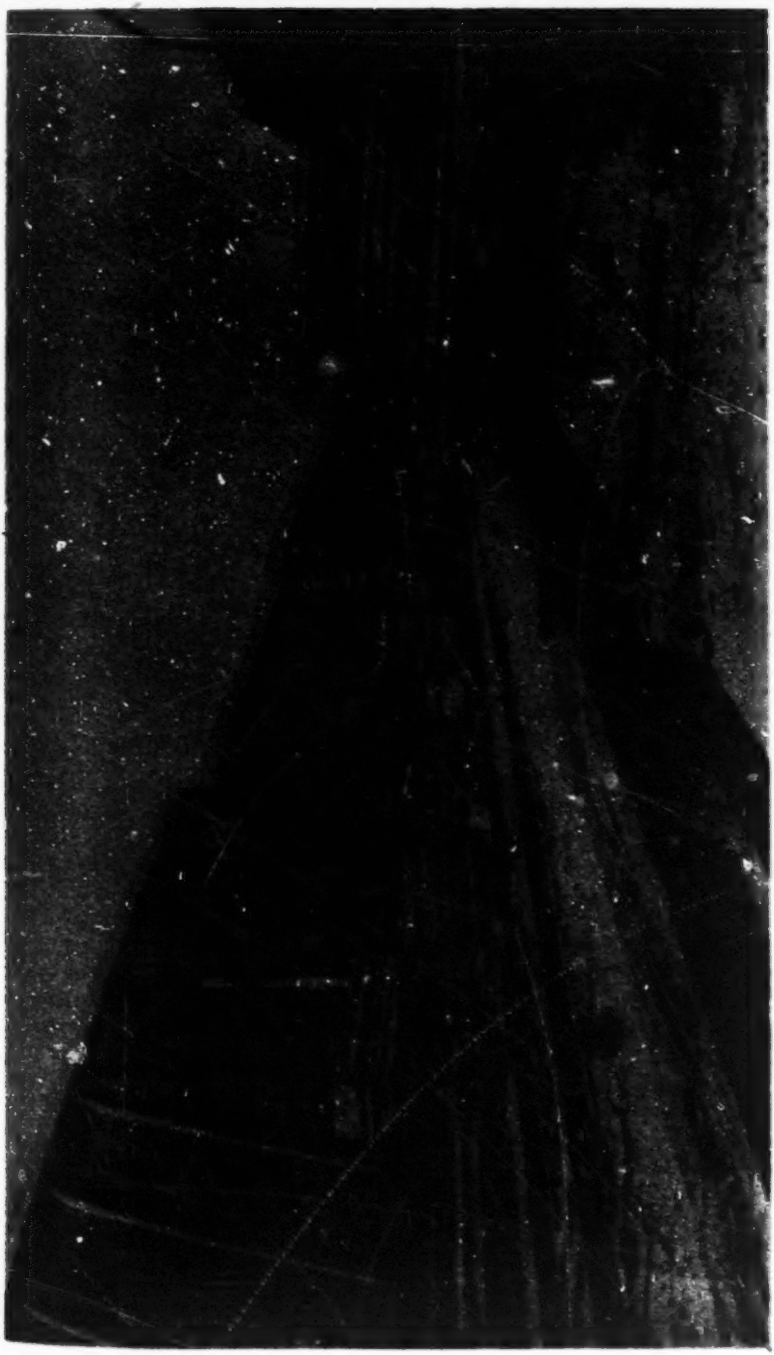
(Here follow three photolithographs, side folios 95-96, 97-98 and 99-100)

95-96

DEFENDANTS' EXHIBIT A.

DEFENDANTS' EXHIBIT B.

DEFENDANTS' EXHIBIT C.



[fol. 101] When I speak of "coopering track" I have reference to the fact in this market the term "coopering" includes the preparation of box cars for loading. It is a generic term as I understand it, including the inspection, the patching and sweeping and installing of grain doors. When you speak of coopering a car you include all of those processes.

From the time the car is ordered by an elevator for loading out until the time that that car leaves the elevator loaded, and in particular with reference to these grain doors, taking each step as it comes along, the car goes through the following steps. The first step is to order the cars, which is done by the elevator clerk the evening of the day before they are to be loaded out. The ordinary practice is for the elevator first to telephone the local railroad office, giving them the number of cars desired for the next day's loading. Some times the size of the car is specified and some times the destination, but not always. Those are the only things specified. The next morning the railway has set into the premises the number of cars ordered set in, on what I have referred to as the coopering track. About eight o'clock the next morning, after the cars are so placed in this market, the railroad's agent workmen take hold of the cars and repair them in the manner I have described. The coopering track, where the string of cars is set in, with reference to the loading chute of the elevator, is just ahead of the loading spout of the elevator, allowing perhaps two or three hundred yards, perhaps not that much. As a rule there is a mechanical device known as a car puller which the elevator uses to take hold of a string of cars and bring them up one by one to the elevator spout, and of course the first car must be within reach of that puller. They are all coupled together, so when the puller is used the entire string moves up step by step. When they are set on the coopering track by the railroad switch engine, the railroad inspectors in this market enter the cars and inspect them first. Then if they approve it as suitable for the loading of bulk grain, they proceed to patch them, clean them, sweep them out, and then to install the doors as I have said by using paper to protect the cracks. When that is done the car is ready for loading. These doors have been put on each side of the car and the elevator is then ready to move the cars up to the loading spout. Nothing is done by the elevator crew

until their car puller moves the car up to the spout; a
then the spout is placed in the car, the grain is loade
Afterward, after the car is loaded, the car is then mov
a distance beyond the elevator and subsequently the ra
[fol. 102] road employees make a test of the car by testi
it with hammer all around to see whether there are a
loose boards that will permit leakage of the grain. A
inspection is then made by the State inspection officials
determine the grade of the grain and then the car is seale
up, billing is given to the railroad, and the switch engi
moves it out.

The piles of grain doors are alongside the coopering trac
When I say that these railroad employees or agents do th
work of coopering the cars, including the work of installin
grain doors, I refer to a joint contractor here in Kansa
City, who has a contract with all railroads and does thei
work for them; the Goodwin Grain Door Agency I think i
the name. The car is never pulled down by the elevato
crew from the coopering track to the loading spout until th
coopering of the cars, all this work including the installa
tion of the grain doors, is done. Up to the time the car i
pulled down from the coopering track, the elevator em
ployes do not do any of that work. The practice I have
described applies to the two elevators of the defendant com
pany in this case and applies universally in the Kansas City
market.

The history of how the installation of grain doors has
been handled in the Kansas City terminal is familiar to me,
as I have made a special investigation to determine the limit
of that practice. The oldest record I can find dates back
to 1906. A survey was made at that time in this market
of all elevators. The practices at that time were not uni
form in the market, not the same as between different
elevators and not the same between any elevator and dif
ferent railroads; but the practices fell into three groups,
either the railroad installed the doors or employed an agent
to install them, or they employed the elevator company to
do it, paying the elevator company an allowance. That
practice proceeded without a tariff until some time after
1906 and before 1909, at which time a tariff was for the first
time filed. That tariff provided for an allowance where the
work was done by the elevator. In 1911 the allowances
were cancelled and thereafter the railroad uniformly em-

ployed a contractor to do the work. The contractor was employed by the railroad for some of the work as far back as 1906, according to the records of my office. The elevator companies have never paid in this market for the installation of grain doors since at least 1906. The practice with reference to the installation of grain doors is the same today and has been the same since July 1, 1935 as it was prior to that time. The practice with reference to installation of grain doors at country elevator points is not the same as at Kansas City or other terminal points. The [fol. 103] practice at country elevator points is for the elevator to install the doors. The railroad furnishes grain doors and places them on the premises as a rule, but the local elevator operator or his employes attaches the door to the car. The reason for the difference is that it was a matter of expediency. It is impossible naturally for the railroad to have men at one thousand grain elevator loading points. In Kansas City it is necessary to have a force of men in the market to install doors if they do nothing else. As to whether it is the expediency of the railroad or the elevator, it is the railroad's situation.

Cross-examination.

By Mr. Lee:

With respect to the size of grain doors and the manner of installation, I agree with the facts as set out in the opinion of the Interstate Commerce Commission offered in evidence, on pages four and five. I was not a witness at the hearing of that case before the Interstate Commerce Commission, but I did participate in the hearing; I was present at the hearing. I believe there is no variation between my testimony with respect to the installation of grain doors and the practice and custom, and what was testified in that case; I don't think of anything at the moment.

The correspondence between the carriers and the shippers, which included the correspondence set out in the stipulation received in this case, was introduced at that hearing. It was the same correspondence included in the stipulation in this case.

When a grain shipper is ready to ship one or more cars of grain, usually a clerk of the shipper notified the railroad in the afternoon that a car is wanted the next day. The num-

ber of cars necessarily varies; it is whatever they happen to need the next day. The defendant operates two elevators, one in Kansas City, Kansas and the other at Coburg, in Kansas City, Missouri. During the period mentioned in this suit, July 1, 1935 and including February of 1936, I don't know anything about whether or not the company shipped indiscriminately from both elevators; I presume they did. I have stated that ordinarily the sliding door of a box car is not sufficient to prevent great waste of wheat by leakage, and that is correct; and that the grain doors or a barricade nailed to the door post on the inside of the car is necessary to the shipment of grain in bulk.

There are more than two dozen grain elevators in Kansas City, Missouri and Kansas City, Kansas, including the whole terminal of greater Kansas City and they are [fol. 104] scattered over a wide territory, several miles apart. For some time past the carriers here have handled the matter of installing grain doors through an independent agency, a contractor, an outside agency.

(That was all the evidence offered at the trial.)

Thereupon, at the close of all the evidence, the Court announced that the parties would be given time to submit conclusions of law.

Thereupon, the plaintiffs stated that they would submit findings of fact, but the Court said that the parties were not to submit findings of fact because the stipulation of agreed facts would constitute his findings.

Thereafter, the Court made findings of fact as follows:

COURT'S FINDINGS OF FACT

"We find the facts as stipulated and agreed to by the parties, considering it unnecessary to make any additional findings of fact."

Thereafter and within the time allowed, plaintiffs requested the following conclusions of law, all of which were refused by the Court, and exception allowed to the plain-

tiffs to the refusal of each of said conclusions of law herein, for convenience numbered one to eight inclusive:

CONCLUSIONS OF LAW REQUESTED BY PLAINTIFFS AND REFUSAL THEREOF

One

"At the close of all the evidence, a jury having been waived, the Court declares the law to be that the plaintiff is entitled to recover on every shipment."

Two

"At the close of all the evidence, a jury having been waived, the plaintiff moves the Court to find the issues for the plaintiff and render judgment in the sum of Three Hundred Seventy-four Dollars and Forty Cents ($374.40) in plaintiff's favor."

[fol. 105]

Three

"At the close of all the evidence, a jury having been waived, the Court declares the law to be that the decision of the Interstate Commerce Commission that the provision in the tariff for a prior arrangement for a specified period of time was waivable by plaintiff is a decision of an administrative matter and is binding on this Court."

Four

"At the close of all the evidence, a jury having been waived, the Court declares the law to be that the provision of the tariff for prior arrangement for a specified period of time was waived as to each car in that the plaintiff performed the work of installation and the defendant accepted it."

Five

"At the close of all the evidence, a jury having been waived, the Court declares the law to be that the provision in the tariff for prior arrangement for a specified period of time was a condition precedent only to the rendering of the service of the installation of grain doors by the plaintiff for the defendant."

Six

"At the close of all the evidence, a jury having been waived, the Court declares the law to be that the tariff pro-

visions for prior arrangement for a specified period
time did not in law prevent the accrual of the charge up
the performance of the service of installing the grain do
in each car and the acceptance of such service by the
fendant."

Seven

"At the close of all the evidence, a jury having b
waived, the Court declares the law to be that the tariff
posed the primary duty of installing the grain doors on
defendant, and the plaintiff in installing the grain doors
each car installed the doors as defendant's agent under
tariff."

Eight

"At the close of all the evidence, a jury having b
waived, the Court declares the law to be that the notice fr
the defendant to plaintiff that plaintiff permanently
expected to install the grain doors and the continued inst
lation of the grain doors by plaintiff and continued acce
ance of the service by defendant constituted a prior
rangement for a specified period of time under the tari

[fol. 106] Upon the Court refusing to give the above c
clusions of law requested by the plaintiffs, plaintiffs at
time then and there were allowed an exception to the refu
of each of them.

Thereafter, the Court gave the following declaration,
conclusion, of law:

Court's Declaration or Conclusion of Law

"Upon the facts found, we declare the law to be that
plaintiffs can not recover from the defendant under
tariff sued upon by plaintiffs and that judgment should
for defendant.

To this declaration of law plaintiffs are allowed an
ception."

And thereafter, on the 25th day of May, 1937, the Co
rendered judgment for the defendant in words and figu
as follows:

Judgment Entry

Now on this 25th day of May, 1937, this cause coming on to be heard, a jury having been waived by written stipulation filed in this cause, and the parties having agreed to submit the cause on an agreed statement of facts duly filed in the cause, and the Court having heard the evidence and the arguments of counsel, and having considered the agreed statement of facts, the cause is submitted to the Court, and thereupon the Court finds the issues in favor of the defendant and against the plaintiffs.

Wherefore, It Is Ordered Adjudged And Decreed That the plaintiffs have and recover nothing from the defendant in this cause, and that the costs be assessed against the plaintiffs.

Thereafter plaintiffs were granted leave to file a motion for rehearing for the consideration of the Court, which was in words and figures as follows (omitting caption):

Plaintiffs' Motion for Rehearing

"Come now the plaintiffs in the above entitled cause and respectfully submit to the Court that the Court should grant a rehearing in the above entitled cause from the judgment rendered in favor of the defendant, for the following reasons:

[fol. 107] 1. The Court in its opinion and judgment overlooked the fact that in law when the defendant by its letter of July 2, 1935, requested the plaintiffs to install the grain doors from then on out, and the plaintiffs did so install the grain doors, the provision for prior arrangement was in law complied with, regardless of any protestations or agreements or promises of either party to the contrary.

2. The Court in its opinion and judgment overlooked the fact that in law when the Interstate Commerce Commission decided the provisions for prior arrangement were in every case waived where the carrier performed the service for the shipper and the shipper accepted the same, that the Commission was deciding an administrative matter as to whether the provision of a tariff could or could not be waived, analagons to the waiving of an undercharge or any part thereof, which was just as conclusive on this Court as the decision

of the Interstate Commerce Commission in this case authorizing the waiver of forty cents on every dollar charged for this service.

3. The Court in its opinion and judgment overlooks the fact that in law the case of Davis vs. Henderson, 266 U. S. 92, does not hold that the provision for prior arrangement cannot be waived in this case; first, for the reason that the Interstate Commerce Commission had not there determined whether the provision of that tariff was waivable or not, in the exercise of its administrative discretion and, second, that had the Supreme Court of the United States held the provision waivable in the Davis vs. Henderson case, the shipper would have received a benefit by way of damages, not received by other shippers who in good faith complied with the tariff involved in that case requiring the giving of a written request for cars; whereas, in this case the effect of holding the provision in the tariff cannot be waived tends to give this defendant something that other shippers complying with this tariff in good faith and paying the dollar charge stipulated in the tariff for the service, did not get.

4. The Court in its opinion and judgment overlooked the fact in law that by its decision in this case in favor of the defendant, it has permitted the defendant to enjoy the benefit of the installation of the grain doors by the plaintiffs without charge, whereas other shippers who in good faith complied with the tariff and received not one whit more service from the plaintiffs will, because of their good faith, be required to bear the charge; resulting in an unjust discrimination in favor of this defendant against shippers in [fol. 108] good faith, which is prohibited by the Interstate Commerce Act, so that the provision of the tariff for prior arrangements, if construed to have this effect, is totally void in law and does not prevent the accrual of the charge for the service rendered.

Conrad & Durham, Ilus Lee, Charles N. Miller, Crane and Mersereau, Dean Wood, Attorneys for Plaintiffs.

Thereafter, the Court on the 2nd day of July, 1937, after having heard the arguments of counsel, overruled the plaintiffs' motion for rehearing by an order reading as follows:

Order Overruling Motion for New Trial

"The motion of plaintiffs for a new trial in the above entitled case having been duly considered by the Court, and the Court being fully advised in the premises, is by the Court overruled. It Is So Ordered.

Exception is allowed to plaintiffs."

Merrill E. Otis, District Judge.

Approval of Bill of Exceptions by District Judge

Whereupon, the plaintiffs tendered this their Bill of Exceptions to the action of the Court in the various particulars therein set out, which is signed in open Court, sealed and made a part of the record in this case this, the 14th day of September, 1937.

Merrill E. Otis, District Judge.

Certificate Settling and Allowing Bill of Exceptions

I, the undersigned United States District Judge, who presided at the trial of the above entitled cause, do hereby certify that the foregoing Bill of Exceptions contains all of the material facts, matters, things, proceedings, objections, rulings and exceptions thereto, occurring upon the trial of said cause and not heretofore a part of the record herein, including all evidence adduced at the trial (or all evidence material to the issues presented by the assignments of error); and I further certify that the exhibits set forth or referred to, or both, in the foregoing Bill of Exceptions constitute all the exhibits offered in evidence at the said trial, and I hereby [fol. 109] make all of said exhibits a part of the foregoing Bill of Exceptions; and I hereby settle and allow the foregoing Bill of Exceptions as a full, true and correct Bill of Exceptions in this cause, and order the same filed as part of the record herein; and further order the Clerk of this Court to attach to the said Bill of Exceptions, all of the said exhibits not set forth therein; and to transmit said entire Bill of Exceptions, including all exhibits whatsoever, to the Circuit Court of Appeals for the Eighth Circuit.

I further certify that the foregoing Bill of Exceptions contains all local rules relating to the extension of the term

for the purpose of presenting, settling and filing a Bill of Exceptions, and all orders made by me extending the time for such presentation, settling and filing, and that the foregoing Bill of Exceptions is presented, settled and allowed within the time prescribed for that purpose.

Dated this 14 day of September, 1937.

Merrill E. Otis, United States District Judge

The above and foregoing Bill of Exceptions is hereby approved.

I. M. Lee of Conrad & Durham, Charles M. Miller, Dean Wood of Crane & Mersereau, Attorneys for Plaintiffs. Borders, Borders & Warrick, M. W. Borders, Jr., Attorneys for Defendant.

In United States District Court

Election as to Printing—Filed September 15, 1937

The plaintiffs herein hereby elect to have the record in the above-entitled cause printed under the supervision of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri.

I. M. Lee of Conrad & Durham, Charles M. Miller, Dean Wood of Crane and Mersereau, Attorneys for Plaintiffs.

[fol. 110] In United States District Court

Praecipe for Transcript—Filed September 15, 1937

To the Clerk of the above-entitled Court:

You will please prepare transcript of the record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, under the appeal heretofore allowed herein, and include in said transcript the following pleadings, proceedings and documents on file, to-wit:

1. Plaintiffs' petition and record entry of filing thereof.
2. Defendant's entry of appearance and record entry of filing thereof.
3. Order transferring case to Judge Otis and record entry of filing thereof.

4. Defendant's answer and record entry of filing thereof.
5. Record entry of filing of stipulation of agreed facts nd waiving jury and of presentation of evidence and tak- ng case under advisement.
6. Bill of Exceptions as approved, including order, sig- ature and certificate of filing thereof, said bill of exceptions ncluding the stipulation of agreed facts and waiving jury.
7. Memorandum opinion and record entry of filing hereof.
8. Defendant's judgment entry of May 25, 1937, and ecord entry of filing thereof.
9. Order to file motion for rehearing and record entry f filing thereof.
10. Plaintiffs' motion for rehearing and record entry of ling thereof.
11. Order to amend judgment entry of May 25, 1937, and ecord entry of filing thereof.
12. Judgment entry of May 28, 1937, and record entry f filing thereof.
13. Record entry of submitting and taking plaintiffs' mo- on for rehearing under advisement.
14. Order overruling motion for rehearing and record ntry of filing thereof.
15. Petition for appeal and record entry of filing thereof.
16. Assignment of errors and record entry of filing hereof.
[fol. 111] 17. Order allowing appeal and record entry of ling thereof.
18. Appeal bond as approved and record entry of filing hereof.
19. Original citation with acknowledgment of service and ecord entry of filing thereof.
20. Certificate of Clerk that transcript is full and com- lete compliance with praecipe.
21. Election as to printing.

I. M. Lee of Conrad & Durham, Charles [illegible] Miller, Dean Wood of Crane & Merserea[illegible] Attorneys for Plaintiffs.

Service of a copy of the foregoing praecipe is hereby cknowledged this 15th day of September, 1937.

Borders, Borders & Warrick, Attorneys for Defendant.

In United States District Court

Order Extending Time to File Transcript—Filed October 4, 1937

It Is Hereby Ordered, for good cause shown, that the plaintiffs in the above-entitled cause have until Wednesday, November 17, 1937, to file their transcript in the United States Circuit Court of Appeals for the Eighth Circuit and docket the case, and that the time for filing the transcript and docketing the c extended from October 9, 1937 to November 17, 1937.

Signed this 4th day of October, 1937.

Merrill E. Otis, District Judge.

In United States District Court

Memorandum Opinion, Findings of Fact, Conclusion of Law, Indicated Judgment—Filed May 19, 1937

Plaintiffs sue to recover from defendant $624.00 claimed to be due for services rendered in installing grain doors on 624 cars furnished defendant under a tariff claimed by plaintiffs to be applicable and reading, in part—

[fol. 112] "The railroad will act as shipper's agent and install grain doors at terminal elevator points specified below, at a charge of $1.00 per car; prior arrangements for the service to be made with the carriers and to cover a specified period of time:"

Cars were furnished by plaintiffs to defendant in the number stated. The plaintiffs did install grain doors on these cars and billed the defendant at the rate of one dollar per car. Not only, however, were "no prior arrangements for the service" of installing the grain doors in question entered into by the plaintiffs and defendant, but the defendant positively and unequivocally refused to enter into such "arrangements." Since, on the face of the tariff, "prior arrangements" were prerequisite to the effectiveness of the tariff it would seem clear that plaintiffs cannot prevail in this case unless the party or parties for whose benefit the condition precedent of the tariff was written could and did waive it. Plaintiffs contend that the condition

as for their (the carrier's) benefit and that they could and ld waive it.

That the "prior arrangements" condition of this tariff is 1) for the benefit of the carrier and (2) may be waived by he carrier was ruled by the majority of the Interstate Com- nerce Commission in Board of Trade et al. vs. Railway Co., t al., decided April 12, 1937. The reasoning supporting he first of these conclusions is not set out in the report. t seems to us that the conclusion is entirely arbitrary and ltogether unsound.

The $1.00 charge is unreasonably high; the Interstate Commerce Commission so ruled in the case cited. The plain- iffs now admit that in no event should they have judgment t a higher rate than sixty cents per car. Plaintiffs concede hat the real value of the services rendered is not more than ixty cents. How can it be said that it is not, in part at east, for the benefit of the shipper that he shall have the ight of election between himself installing a grain door (a ixty cent job) and paying another $1.00 for doing that ob. Again, how can it be said that a choice as to whether 'the railroad will act as shipper's agent" vel non is of in- erest only to the railroad and of no interest whatever to he shipper?

Not only do we not agree with the majority of the In- erstate Commerce Commission in the case cited that the 'prior arrangements" condition of the tariff is for the sole enefit of the carrier, but we agree with the minority of that Commission that in no event can such a condition in a tariff e waived by either party. Davis vs. Henderson, 266 U. S. 92.

[fol. 113] Findings of Fact

We find the facts as stipulated and agreed to by the par- ies, considering it unnecessary to make any additional indings of fact.

Declaration of Law

Upon the facts found we declare the law to be that the plaintiffs cannot recover from the defendant under the tariff sued upon by plaintiffs and that judgment should be for defendant.

To this declaration of law plaintiffs are allowed an ex- ception.

Counsel for defendant will prepare and submit an appropriate judgment entry.

Merrill E. Otis, District Judge.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 114] Appearances of counsel omitted in printing.

[fol. 115] In United States Circuit Court of Appeals

Order of Submission—April 18, 1938

This cause having been called for hearing in its regular order, argument was commenced by Mr. Dean Wood for appellant, continued by Mr. M. W. Borders, Jr., for appellee, and concluded by Mr. Hale Houts for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 116] In United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1938

No. 11,047

Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees, Chicago, Rock Island and Pacific Railway Company, Appellants,

vs.

Simonds-Shields-Lonsdale Grain Company, Appellee

Appeal from the District Court of the United States for the Western District of Missouri

Mr. Dean Wood and Mr. Hale Houts (Mr. Luther Burns, Mr. Henry S. Conrad, Mr. Charles M. Miller, Mr. Cyrus Crane and Mr. George J. Mersereau were with them on the brief) for Appellants.

Mr. M. W. Borders, Jr., for Appellee.

Before Stone, Woodrough and Booth, Circuit Judges

OPINION—July 5, 1938

BOOTH, Circuit Judge, delivered the opinion of the Court:

This was an action brought by the appellants, hereinafter called "plaintiff-carrier", against the defendant, hereinafter called the "shipper", to recover for services in install-[fol. 117] ing certain grain doors on the box cars in which grain in bulk was shipped in interstate commerce by the shipper.

The Court below found in favor of the shipper, and from the judgment, this appeal was taken.

The facts were largely stipulated, and, with headings and signatures omitted, are set out in the margin.*

---

* Stipulation and Agreed Statement of Facts

"It is hereby stipulated and agreed, by and between the parties hereto, that a jury may be waived in the above entitled cause and the same submitted to the court on the following stipulated facts:

* * * * * * *

"(3) It is further stipulated and agreed that plaintiffs duly filed with the Interstate Commerce Commission, and duly posted and published a certain Western Trunk Lines Freight Tariff No. 330, with respect to furnishing and installing grain doors, or lumber for side or end door barricades for carload shipments in bulk, of grain, grain products and other articles, at certain terminal elevator points specified in said Tariff, including Kansas City, Missouri-Kansas, and that the effective date of said Tariff was July 1st, 1935; that attached to this stipulation is a true and correct copy of said Tariff, marked 'Exhibit A', the parties hereto agreeing that the same may be offered in evidence and used with the same force and effect as though duly certified by the Interstate Commerce Commission. The particular part of said Tariff, applicable to this case, is designated as Item No. 70, on page 13 of said Tariff.

"(4) It is further stipulated and agreed that on July 2 1935, following the effective date of said Tariff on July 1 1935, the defendant, along with many other shippers of grai and grain products from terminals in Kansas City, Missouri Kansas, sent by mail a joint letter to the local freight agent of all railroads, including the plaintiffs, entering sai terminals, to the general effect that the defendant, as shipper of bulk grain, regardless of anything contained i the Tariff hereinbefore referred to, or any other rule o regulation filed with the Interstate Commerce Commissio or otherwise, and the other said shippers, signing such lette would expect the plaintiffs and the other railroads to whom said joint letter was addressed, to continue from and afte July 1, 1935, as before said date, to furnish and supply th defendant and the other said shippers, upon orders for car to load and ship bulk grain, such equipment as would b suitable to carry such bulk grain safely, and that if ordinar box cars were furnished and supplied on said orders, th defendant and the other said shippers signing said lette would expect such cars to be fully coopered or prepared wit necessary side-door barricades, completely installed an ready for loading, and that the defendant and said othe shippers, regardless of the provisions of said Tariff, d clined and would continue to decline to pay plaintiffs an charge demanded for the service of installing, or placin of grain doors or barricades in cars delivered by plaintif to the defendant, upon orders of the defendant, for th loading of bulk grain;

* * * * * * *

(Quoted from letter of July 2, 1935.)

" 'The undersigned, being shippers of bulk grain locat in Kansas City, Mo.-Kans., hereby notify you, and each you, that regardless of anything contained in items Nos. and 75 appearing on page 13 of a certain tariff filed for yo account by L. E. Kipp, Agent, with the Interstate Commer Commission under No. I. C. C. A-2579, or any other rule regulation filed with the Interstate Commerce Commissi or otherwise, they expect you to continue from and aft July 1, 1935, as before said date, to furnish and supply the upon orders for cars to load and ship bulk grain such equi

ment for said purpose as is suitable safely to carry bulk grain.

"'Said undersigned parties further notify you that if ordinary box cars are furnished and supplied upon such orders they will expect them to be fully coopered or prepared with necessary side-door barricades completely installed and ready for loading.

4(a) "'Said undersigned parties further notify you that regardless of the tariff items, or any other rules or regulations, they decline and will decline to pay any charges whatsoever which may be demanded by you for any work or service involved in making your cars suitable for loading bulk grain, and in particular they decline and will decline to pay any charge for the alleged service of installing or placing grain doors or barricades in cars tendered by you upon order for loading bulk grain.

[fol. 118] "'Said undersigned parties further notify you that if upon orders as aforesaid cars are furnished and supplied which are not fully coopered with grain doors or barricades in place or which are not otherwise suitable and properly prepared for loading bulk grain such cars will be accepted under protest, and protest is hereby made against each and every such car furnished or which may be furnished upon such orders.

"'And said undersigned parties further notify you that if cars are furnished and supplied, contrary to this notice, which necessitate expenditure by said parties, or any of them, for labor or materials in order to install grain doors or barricades, or otherwise to make such cars suitable and properly prepared for loading bulk grain, then in that and every such event said parties will demand reimbursement in full together with interest for each and every such expenditure.'

* * * * * * *

"On July 15, 1935, the local agent of plaintiffs, along with the local agents of the various other railroads entering Kansas City, Missouri-Kansas, sent to the defendant and other grain companies in Kansas City, Missouri-Kansas, in

reply to the letter quoted next above, the following joint letter:

* * * * * * *

"'GENTLEMEN:

"'In reply to your letter of July 2, 1935, relating to the installation of grain doors and other kindred matters, let me invite your attention to Item 70, as amended, and Item 75-A of the attached copy of W. T. L. Tariff No. 330 (L. E. Kipp's I. C. C. A-2579, H. B. Cummins' I. C. C. 372, J. E. Johanson's I. C. C. 2713, H. G. Toll's I. C. C. 1358) and Supplement No. 1 thereto.

"'It is believed that upon mature reflection you will agree with us that neither the shipper nor the railroad company can be party to a practice not in conformity with the provisions of the tariff as written.

"'In connection with your suggestion that you will demand reimbursement for grain doors or lumber installed at your expense, permit us to say that payment of such bills would be contrary to the provisions of the applicable tariff and therefore illegal. Bills of that character therefore cannot be recognized.

"'Unless therefore you make unqualified arrangements pursuant to the terms of the tariff it will be necessary to provide cars which do not have the grain doors installed although, of course, the carrier will provide grain doors or lumber as contemplated by the tariff. * * *'

"(5) It is further stipulated and agreed that between July 1, 1935, and February 29, 1936, plaintiffs, upon the orders of the defendant, placed at the defendant's elevator for loading by defendant with grain in bulk, a total of six hundred twenty-four (624) box cars, and that after said cars were placed for such loading and before they were loaded, plaintiffs, at their own cost and expense, furnished and installed the necessary grain doors in each of said 624 box cars, as alleged in plaintiffs' petition; that monthly during said period, plaintiffs rendered to the defendant bills of $1.00 for each of said cars in which grain doors were installed by plaintiffs during the month for which such bills were rendered; that on November 22, 1935, the defendant returned to plaintiffs' agent all bills theretofore ren-

ered by plaintiffs to the defendant, with a letter declining o pay said bills, said letter being as follows:

"November 22, 1935.

. . . . . .

"'We are returning you herewith bills for $1.00 per car harge for alleged service of installing grain doors in cars urnished at the Rock Island and Milwaukee Elevators oaded with bulk grain for transportation over the various nes issuing these bills.

"'There is no tariff authority for this charge unless it be tem No. 70 of W. T. L. Tariff 330, which item however rovides in paragraph (1) that the railroad will act as the hip, r's agent and install grain doors at terminal elevator oints at a charge of $1.00 per car if prior arrangements for he service are made with the carriers covering specified eriod of time.

"'This tariff became effective on July 1st and we know of o change in the practice of furnishing and installing grain oors from that existing prior to July 1st, the carriers con- inuing to furnish upon orders for cars to transport bulk rain, cars completely equipped with grain doors and ready or use. We have made no arrangement with any carrier nder which such carrier was to install the doors as our gent as contemplated by the tariff above referred to.

[fol. 119] "'For this reason will you please advise tariff uthority for these charges and if the bills were issued nder authority of Item 70 W. T. L. Tariff 330 will you lease advise how you arrived at the conclusion this item ustifies the charge in the absence of any arrangement as ontemplated by paragraph (1)?'

"That on January 9th, 1936, plaintiffs, through their gent, replied to the letter of the defendant quoted last bove as follows:

. . . . . .

"'You request to be advised by what tariff authority hese bills are presented and as to the arrangement made in onnection with Paragraph 1 of Item 70 of W. T. L. tariff 30.

"'As to your first question, you are advised that these ills are rendered under the authority of W. T. L. freight ariff No. 330.

"'You are further advised that under date of July 2
1935, you were a party to a joint letter to the railroads,
which was contained the following paragraph:

"'"Said undersigned parties further notify you that
ordinary box cars are furnished and supplied upon s
orders they will expect them to be fully coopered or p
pared with necessary side door barricades completely
stalled and ready for loading."

"'The Railroad Company in good faith accepted t
notice that all cars ordered for grain loading were to
fully coopered as a prior arrangement made with
railroads, and, accepting such prior arrangement, the c
were coopered for your account and as your agent, and w
accepted and used by you as such.

"'This state of facts renders the tariff charges applica

"'I present herewith bills for the services rendered: a
request is hereby made that your check to cover be tra
mitted without delay.'

"That thereafter and on January 15, 1936, the defend
replied to plaintiffs' letter quoted last above as follows:

. . . . . .

"'Replying to your letter of January 9th, file 7968, a
returning various bills for charges covering alleged serv
of installing grain doors in cars loaded with grain at t
Milwaukee and Rock Island Elevators.

"'We have noted all you have said and cannot agree w
you that Mr. Scott's letter of July 2nd, under our signatu
could be construed as making a prior arrangement with t
carriers for this service.

"'As we stated in our letter of November 22nd, we ha
not made any arrangement with any carrier to perform t
service in accord with the provisions of Item 70 W. T.
tariff 330, which states this arrangement is to be made w
the carriers and to cover a specified period of time.

"'For this reason we decline to pay the bills and retu
them with this letter.'

. . . . . .

"On March 30th, 1936, the local agent of plaintiffs, alo
with the local agents of the various other railroads enteri
Kansas City, Missouri-Kansas, sent to the defendant a
other grain companies in Kansas City, Missouri-Kansas,

reply to the letter quoted next above, the following joint letter:

* * * * * * *

"'Western Trunk Lines Tariff No. 330-A (Kipp's I. C. C. No. A-2653, Peel's I. C. C. No. 2779, Cummins' I. C. C. No. 288) Provides, subject to qualifications stated in Items 70 and 75 thereof, that in connection with carload shipments in *bulk* (subject to that tariff) of grain, grain products and other articles taking same rates, the necessary grain doors, or lumber in lieu thereof, shall be installed by the shipper (or his agent) and at his expense.

"'Such installation contemplates the usual accessorial service in preparation of cars, such as inspection, a limited amount of cleaning and minor and inexpensive repairs required to prevent loss of grain by leakage.

"'By Item 70 of the tariff, relative to shipments for road haul movement, it is provided that at the terminal elevator points specified in the item, the railroad agent "will act as shipper's Agent and install grain doors at a charge of $1.00 per car; prior arrangements for the service to be made with the carriers and to cover a specified period of time."

* * * * * * *

"'In order that the tariff regulations may be strictly complied with, you will advise whether you elect to have carriers furnish cars with grain doors or lumber installed, or whether you elect to install grain doors or lumber for your own account.

"'In the event you wish carrier to perform the installation service the period of time this arrangement shall be in force shall be specified.

"'If you decline to enter into an arrangement, as provided by the tariff, or if you elect to install the grain doors or lumber for your own account, the carrier will furnish cars inspected and O. K.'d for grain loading, but without grain doors or lumber installed. * * *'

"(6) It is further stipulated and agreed that the defendant returned to plaintiffs all bills rendered by plaintiffs to the defendant for the installation of grain doors in said 624 box cars, and wrote letters declining payment of the same and referring to defendant's letters to plaintiffs of November 22, 1935, and January 15, 1936, for defendant's reasons for its refusal to pay said bills.

"(7) It is further stipulated and agreed that each and all of said 624 box cars were loaded by the defendant with grain in bulk after plaintiffs installed the necessary grain doors in each of said cars, and that said 624 carload shipments in bulk, of grain, thereafter moved in due course from defendant's elevator in Kansas City, Missouri-Kansas, in interstate commerce, and that the loading point and unloading point of all said 624 carload shipments in bulk, of grain, were not within the same terminal or switching district.

"(8) It is further stipulated and agreed that plaintiffs have repeatedly demanded of the defendant payment for the installation of the said necessary grain doors in said 624 box cars, and each of them, and that the defendant has at all times refused, and still refuses, to pay for said service."

"Exhibit A", referred to in paragraph (3) of the Stipulation and Agreed Statement of Facts, reads in part as follows:

"Freight Tariff No. 330

"Rules and Regulations—Continued

Subject

Item No. 70.

Furnishing and Installing Grain Doors or Lumber for Side and End Door Barricades

"(1) Grain Doors or Lumber for necessary side door barricades (also for necessary end door barricades, if car is equipped with end doors requiring such protection) for carload shipments in bulk, of grain, grain products, seeds and other articles taking same rates, as specified in Lists Nos. 1, 2, 3, 4, 5, 6, Items Nos. 200 to 270, inclusive, will be furnished at loading stations without charge, by the initial road-haul carrier. * * * The grain doors or lumber so furnished shall be installed by the shipper (or his agent) and at his expense. The railroad will act as shipper's agent and install grain doors at terminal elevator points specified below, at a charge of one dollar ($1.00) per car; prior arrangements for the service to be made with the carriers and to cover a specified period of time: * * *

"Kansas City, * * * Mo.-Kan."

[fol. 120] Among them was a provision from a Freight Tariff, effective July 1, 1935. (See Exhibit "A" at the end of the stipulated facts). Said clause reads as follows:

"(1) Grain Doors or Lumber for necessary side door barricades (also for necessary end door barricades, if car is equipped with end doors requiring such protection) for carload shipments in bulk, of grain, grain products, seeds and other articles taking same rates, as specified in Lists Nos. 1, 2, 3, 4, 5, 6, Items Nos. 200 to 270, inclusive, will be furnished at loading stations without charge, by the initial road-haul carrier. • • • The grain doors or lumber so furnished shall be installed by the shipper (or his agent) and at his expense. The railroad will act as shipper's agent and install grain doors at terminal elevator points specified below, at a [fol. 121] charge of one dollar ($1.00) per car; *prior arrangements for the service to be made with the carriers and to cover a specified period of time:* • • •

"Kansas City • • • Mo.-Kan." [Italics ours.]

It is contended by the shipper that there was no prior arrangement made by it with the carrier.

It is contended by the carrier, first: that the shipper entered into a prior arrangement with the carrier; and, second, that the shipper waived the tariff provision requiring prior arrangement because of its acceptance of the carrier's service in installing grain doors.

The clause relied upon by the carrier is contained in a letter, dated July 2, 1935, from the shipper, and reads as follows [See stipulated facts 4(a)]:

"Said undersigned parties further notify you that if ordinary box cars are furnished and supplied upon such orders they will expect them to be fully coopered or prepared with necessary side-door barricades completely installed and ready for loading."

This excerpt is taken from a letter written by the shipper to the local agents of the carriers. This excerpt gives rise to the principal questions in the case, viz.:

(1) Was there a prior arrangement between the plaintiff-carrier and the shipper relative to the service of installing the grain doors?

(2) Could such prior arrangement, if made, be waived by either party?

(3) Was there any waiver made or attempted by either party?

(4) Has the Interstate Commerce Commission exclusive jurisdiction to pass upon the question of existence of waiver

Taking up the first question, we fail to find either in the findings of fact, conclusions of law, or in the transcript of evidence apart from these, anything which would support a finding of a "prior arrangement" between the parties. On the contrary, the correspondence found in the findings of fact makes it very clear that no such prior arrangement had been made.

The clause relied upon by plaintiff-carrier, above quoted, is immediately followed by three other clauses in the same letter which remove any doubt about a "prior arrangement" [fol. 122] having been made, even if the clause above quoted were ambiguous, which we think is not the case.

The trial Court in its Memorandum uses the following language:

"Cars were furnished by plaintiffs to defendant in the number stated. The plaintiffs did install grain doors on these cars and billed the defendant at the rate of one dollar per car. Not only, however, were 'no prior arrangements for the service' of installing the grain doors in question entered into by the plaintiffs and defendant, but the defendant positively and unequivocally refused to enter into such 'arrangements.'"

The second and third questions may be treated together. They were so treated by the lower Court in its Memorandum. We quote the language used, even assuming that there was a prior arrangement.

"That the 'prior arrangements' condition of this tariff is (1) for the benefit of the carrier and (2) may be waived by the carrier was ruled by the majority of the Interstate Commerce Commission in Board of Trade et al. vs. Railway Co., et al., decided April 12, 1937. The reasoning supporting the first of these conclusions is not set out in the report. It seems to us that the conclusion is entirely arbitrary and altogether unsound.

"The $1.00 charge is unreasonably high; the Interstate Commerce Commission so ruled in the case cited. The plaintiffs now admit that in no event should they have judgment at a higher rate than sixty cents per car. Plaintiffs concede that the real value of the services rendered is not more than

sixty cents. How can it be said that it is not, in part at least, for the benefit of the shipper that he shall have the right of election between himself installing a grain door (a sixty cent job) and paying another $1.00 for doing that job. Again, how can it be said that a choice as to whether 'the railroad will act as shipper's agent' vel non is of interest only to the railroad and of no interest whatever to the shipper?

"Not only do we not agree with the majority of the Interstate Commerce Commission in the case cited that the 'prior arrangements' condition of the tariff is for the sole benefit of the carrier, but we agree with the minority of that Commission that in no event can such a condition in a tariff be [fol. 123] waived by either party. Davis v. Henderson, 266 U. S. 92."

We agree with this conclusion of the lower Court.

In the Henderson case, supra, a shipper of cattle sued the Railroad for failure to furnish a car within a reasonable time after notice. The defense was that the notice had not been given in writing as required by the tariff. Oral notice had been given by plaintiff to the station agent and accepted by him. The Supreme Court in its opinion said:

"The contention is that the rule was waived. It could not be. The transportation service to be performed was that of common carrier under published tariffs. The rule was a part of the tariff. Georgia, Florida & Alabama Ry. Co. v. Blish Milling Co., 241 U. S. 190, 197; Missouri, Kansas & Texas Ry. Co. v. Ward, 244 U. S. 383, 388; Davis v. Cornwell, 264 U. S. 560, 562."

See also, Van Dusen Harrington Co. v. Northern Pacific Ry. Co., 32 F. (2d) 466 (C. C. A. 8), and Northern Pac. Ry. Co. v. Van Dusen Harrington Co., 60 F. (2d) 394 (C. C. A. 8); American Railway Express Company v. American Trust Co., 47 F. (2d) 16.

Furthermore, the correspondence shows that neither the Railroad Company nor the shipper ever attempted to waive the requirement in question.

The fourth question remains: Does the Interstate Commerce Commission have exclusive jurisdiction of the matter of waiver to the exclusion of the Federal Courts?

The construction of a tariff is a matter of law for the courts unless technical words are employed which must first be given an interpretation by the Commission. Where words of a tariff have an ordinary meaning, the construction of

such tariff, its effect and validity, is for the determination of the court. Great Northern Ry. Co. v. Merchants' Elevator Co., 259 U. S. 285; Standard Oil Co. v. United States, 283 U. S. 235; Butler Motor Co. v. Atchison, T. & S. F. Ry. Co., 272 F. 683 (C. C. A. 8).

We think the judgment should be

Affirmed.

It is so ordered.

[fol. 124] DISSENTING OPINION

WOODROUGH, Circuit Judge, dissenting:

The "arrangement" required by the tariff is for the shipper to let the railroad know before shipment which one as between the two of them is to perform the service in question and for how long. Nothing else. These shippers unequivocally indicated their expectation that the railroad would perform the service and fixed the time "from and after June 1, 1935." Their accompanying threat not to pay for the service was brutum fulmen—as though they had said they would not pay the freight on the goods they shipped, or demurrage. If the courts require them to pay, discrimination between those who have had the service and have paid for it and those who have had it without paying for it will be avoided. Discrimination is the evil and the courts should help, not hinder, doing away with it.

[fol. 125] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 11047

FRANK O. LOWDEN, JAMES E. GORMAN and JOSEPH B. FLEMING, Trustees, Chicago, Rock Island and Pacific Railway Company, Appellants,

vs.

SIMONDS-SHIELDS-LONSDALE GRAIN COMPANY

JUDGMENT—July 7, 1938

Appeal from the District Court of the United States for the Western District of Missouri

This cause came on to be heard on the transcript of the record from the District Court of the United States for the

Western District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that the Simmonds-Shields-Lonsdale Grain Company have and recover against Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees, Chicago, Rock Island and Pacific Railway Company, the sum of Twenty Dollars for its costs herein, to be collected according to law.

[fol. 126] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

[Title omitted]

APPELLANTS' PETITION FOR REHEARING—Filed July 19, 1938

Come now Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees, Chicago, Rock Island and Pacific Railway Company, appellants, and respectfully petition the court to grant them a rehearing in this cause.

The action was instituted by appellants to recover interstate freight charges from defendant Grain Company for the service of installing grain doors in cars for bulk shipment of grain at the request of the defendant. This court by a majority opinion, affirming the judgment of the District Court, has held that the tariff obligation of the shipper to pay for the service was conditioned by the tariff upon [fol. 127] compliance by the shipper with the tariff provision "prior arrangements for the service to be made with the carriers and to cover specified period of time," and that defendant shipper did not make such prior arrangements, and is not liable for the service charges provided by the tariff. Judge Woodrough in a dissenting opinion has held that the " 'arrangement' required by the tariff" was made; that defendant is liable for the tariff charges and that only by enforcement of the liability will discrimination be avoided.

The case is of importance because it is a test case involving similar claims of many carriers against many shippers and because it involves an important question of enforcement of interstate tariffs and prevention of discrimination by interstate carriers.

Appellants pray for a rehearing on the following grounds:

I.

Because the court in the majority opinion has inadvertently overlooked that by the tariff the installation of grain doors is a shippers' service in all circumstances and without qualification; that the tariff places the cost of installation on the shipper in all cases whether the installation is performed by the shipper or by an agent of the shipper; that installation is not a part of the carrying charges of the carrier; that the tariff provides that the carrier will act as agent for the shipper for the installation at a charge; that the tariff fixes a charge and the amount thereof to be paid the carrier by the shipper for the installation service by the carrier as the shippers' agent.

II

Because the court in the majority opinion has inadvertently overlooked that "the 'arrangement' required by the tariff is for the shipper to let the railroad know before shipment which one, as between the two of them, has performed the service in question and for how long. Nothing else." (Dissenting opinion of Judge Woodrough); that "the shippers unequivocally indicated their expectation 'that the railroad would perform the service and fixed the time from and after June 1, 1935.'" (Dissenting opinion of Judge Woodrough); that the shippers' "accompanying threat not to pay for the service was brutum fullem—as though they had said they would not pay the freight on the goods shipped." (Dissenting opinion of Judge Woodrough) [fol. 128] that therefore all the requirements of the tariff for prior arrangements were fully met.

III

Because the court in the majority opinion has inadvertently overlooked that the obligation to pay for the service when performed by the carrier as the shipper's agent (subject only to reduction by the Interstate Commerce Commission) was fixed by the tariff as a matter of law and not subject to private contract or waiver between the parties and that the avoidance of unlawful discrimination demands that the shipper be required to pay the tariff charge (as reduced by the Interstate Commerce Commission to 60 cents

per car). 49 U. S. C. A., Sections 1 (6), 2, 6 (7), 10 (1) (2) (4), 41 (1); Pittsburgh, etc. R. R. Co. v. Fink, 250 U. S. 577, 582-3, 40 S. Ct. 27, 28; Robinson v. Ry., 233 U. S. 173, 180-1, 34 S. Ct. 556, 558; Loomis v. Lehigh Valley Ry., 240 U. S. 43, 47, 50, 36 S. Ct. 228, 229-30; Hines v. Richards Co., 290 Fed. 162, 164, (C. C. A. 4); Wabash Railway Co. v. Horn, 40 Fed. (2d) 905, 906, (C. C. A. 7); Menasha Paper Co. v. Chicago & N. W. Ry. Co., 241 U. S. 55, 58-60, 36 S. Ct. 501, 503-4. The Elkins Act, Title 49, Sec. 41 (1) (1906), reads in this connection as follows:

"And it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said chapter whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said chapter, or whereby any other advantage is given or discrimination is practiced."

The majority opinion construes the tariff as permitting the shipper to request, receive and accept the extra service of the carrier offered by the tariff without paying the tariff charge therefor.

IV

Because the court in the majority opinion has inadvertently overlooked that the performance by the plaintiff of the shippers' service to the defendant of installation of grain doors without the payment to the plaintiffs of the charges fixed by the tariff against the shippers in the case of the performance of the service by the carrier would necessarily constitute discrimination in favor of the [fol. 129] defendant shipper, and this, regardless of what the defendant shipper said about paying for the service. Statutes and decisions cited Ground III, supra.

V

Because the court in the majority opinion has inadvertently overlooked that the demand of the defendant shipper that plaintiffs install grain doors made it the duty of the plaintiffs, under the tariff, to perform the service as agent for the defendant, Menascha Paper Co. v. Chicago & N. W.

Railway Co., 241 U. S. 55, 59-60, 36 S. Ct. 501, 503-4, a
that the shippers' "accompanying threat not to pay
the service was brutum fullem—as though they had s
they would not pay the freight on the goods they shipped
(Dissenting opinion of Judge Woodrough). Statutes a
decisions cited Ground III, supra.

VI

Because the court in the majority opinion has also in
vertently overlooked that the performance of the shippe
service of grain door installation by the carrier and
acceptance and the shipping of the cars so serviced r
dered the shipper liable under the tariff and requires p
ment in order to prevent discrimination, regardless of pr
arrangements by the shipper. 49 U. S. C. A. Sec. 10, (
(2), (4). Davis, Director-General of Railroads v. Oil C
285 Fed. 470, 472-3, (C. C. A. 4); American Railway Co.
Lindenburg, 260 U. S. 584, 591-2, 43 S. Ct. 206, 209; a
Statutes and decisions cited Ground III, supra.

Appellants respectfully aver that it appears from t
majority opinion that the matters of law and fact set
in the foregoing grounds were inadvertently overlooked
the majority of the court; that all of said matters are m
terial and were duly relied upon and in substance present
by appellants in their brief and oral argument upon the s
mission of the cause to this court.

Wherefore, appellants respectfully pray that their pe
tion be sustained and rehearing be granted.

Cyrus Crane, George J. Mersereau, Dean Wo
Charles M. Miller, John E. Du Mars, Wright C
rad, Hale Houts, Counsel for Appellants.

[fol. 130] We, Dean Wood, Charles M. Miller and H
Houts, hereby certify that we are counsel for Frank
Lowden, James E. Gorman and Joseph B. Fleming, Tr
tees, Chicago, Rock Island and Pacific Railway Compa
the appellants in the above entitled action, and that t
foregoing petition for rehearing is not presented for t
purpose of delay or vexation but is in our opinion w
founded in law and fact and proper to be filed herein.

Dean Wood, Charles M. Miller, Hale Houts, Coun
for Appellants.

[File endorsement omitted.]

[fol. 131] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—August 4, 1938

The petition for rehearing filed by counsel for appellants in this cause having been considered, It is now here ordered by this Court that the same, be, and it is hereby, denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION OF APPELLANTS FOR STAY OF MANDATE—Filed August 15, 1938

Come now Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees, Chicago, Rock Island and Pacific Railway Company, appellants in the above entitled cause, and show to this court that they desire stay of the mandate of the court herein for the purpose of and pending application by appellants to the Supreme Court of the United States for a writ of certiorari to review the judgment of the court herein.

Wherefore, appellants pray that the mandate of this court be stayed and withheld until the 14th day of September, 1938.

Dated August 11, 1938.

Cyrus Crane, George J. Mersereau, Dean Wood, Charles M. Miller, John E. Du Mars, Wright Conrad, Hale Houts, Counsel for Appellants.

[File endorsement omitted.]

[fol. 132] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING ISSUANCE OF MANDATE—August 15, 1938

On Consideration of the motion of appellants for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if

within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

[fol. 133] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 134] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 17, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 42,827. U. S. Circuit Court of Appeals, Eighth Circuit, Term No. 342. Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees, Chicago, Rock Island and Pacific Railway Company, petitioners, vs. Simonds-Shields-Lonsdale Grain Company. Petition for a writ of certiorari and exhibit thereto. Filed September 12, 1938. Term No. 342, O. T., 1938.